Edw. Daniel
Lincoln's Inn 144

DECISIONS

OF THE

Court of King's Bench,

UPON

SETTLEMENT-CASES;

FROM

The Death of LORD RAYMOND,
in *March* 1732, to *June* 1776, inclusive.

DURING WHICH TIME

LORD HARDWICKE, SIR WILLIAM LEE,
SIR DUDLEY RYDER, and LORD MANSFIELD,
presided in that Court.

TO WHICH ARE ADDED,

TWO TABLES, one of the NAMES of the CASES, the other of the PRINCIPAL MATTERS.

By SIR JAMES BURROW, KNT.

The SECOND EDITION,
With ADDITIONS of MARGINAL NOTES, and REFERENCES.

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ADVERTISEMENT.

THE conſtant Rule of *intituling* Seſſions-Caſes, when original Orders of Removal, and Orders of Seſſions diſcharging or confirming them, are returned up into this Court on Writs of *Certiorari*, is as follows. The KING is named as *Proſecutor*; and the Inhabitants of the PARISH *charged with the Paupers* by the Order of Seſſions, and thereupon *applying for the Certiorari* to remove the Orders into this Court, are named as Defendants.

But theſe Caſes are *never* intitled in the Manner that very many of them are reported and cited in the common printed Books, *viz.* "*The Pariſh of A.* againſt *The Pariſh of B.*" Nor can they be found in the Rule-Books of the *Crown-Office*, under any ſuch Title. Whenever ſuch a Caſe is ſearched for in that Office, it is neceſſary that the Inhabitants of the Pariſh *laſt charged* with the Paupers *by the Seſſions* be conſidered as *Defendants*, at the Proſecution of the *King*. For Example—Two Juſtices remove *M. B.* from *Stroude* to *Lidney*: *Lidney appeals* to the Seſſions. IF the Seſſions *confirm* the Order, then *Lidney*, ſtanding *charged* with the Pauper by the Order of Seſſions, *brings* the *Certiorari*; and the Title of the Cauſe is "*The King* againſt *the Inhabitants of Lidney*:" But *if* the Seſſions had *quaſhed* the Order of the two Juſtices, then the Pariſh of STROUDE would have been charged with the Pauper, by the Determination of the Seſſions, and in *that* Caſe, the Title muſt have been "*The* "*King* againſt *The Inhabitants of Stroude.*"

Alphabetical Table of the Names of Caſes.

Edward Daniel

A.

REX *v.* Inhabitants of Acton Beauchamp, *Page* 326
—— Allcannings, 634
—— All Saints in Hereford, 656
—— Alton, 418
—— Aſhton, (Cold) 444
—— Aſton Keynes, 725
—— Atherton, 203
—— Auſtrey, 441
—— Aythrop Rooding, 412

B.

Rex *v.* Inhabitants of Bank Newton, *Page* 455
—— Bardon, (Staunton under) 558
—— Barton Turſe, 49
—— Bath Eaſton, 774, 823
—— Beccles, 230
—— Bedwin, (Great) 163, 584
—— Bentley, 425
—— Berkeſwell, 168
—— Berwick St. John, 502

Rex *v.* Inhabitants of Bilſdale Kirkham, *Page* 828
——— Biſhop's Hatfield, 439
——— Biſhopſide, (High and Low) 381
——— Bitton, 631
——— St. Botolph's without Biſhopſgate, 367
——— Bourn, 39
——— Bowling, 177
——— Bradenham, 394
——— Bradley Field, (Underbarrow &) 545
——— Bradninch, 662
——— Bramley, 75
——— Bramſhaw, 98
——— Bray 259, 682
——— Bridgeford, (Eaſt) 133
——— Bryngwyn, 725
——— Buckingham, 314
——— Buckland Denham, 694
——— Bugden, 270
——— Burgh in the Marſh, 745
——— Burnham, 87
——— Burton Bradſtock, 531
——— Butley, 107

C.

Rex *v.* Inhabitants of Carleton, 813
——— Carſhalton, 809
——— Caſtlechurch, 68
——— Caſtleton, 569
——— Caverſwall, 461
——— Charles, 706
——— Chart (Great) 194
——— Chidingfold, 415
——— Chirk, 782
——— Chriſtchurch, 494
——— Cirenceſter, 17
Rex *v.* Inhabitants of Clapham, *Page* 266
——— Clare, 819
——— Clifton upon Dunſmore, 697
——— Cliſthydon, 161
——— Cold Aſhton, 444
——— Coln St. Aldwin's, 136
——— Creech St. Michael's, 765
——— Croſcombe, 256
——— Cuckfield, 290

D.

Rex *v.* Inhabitants of Deddington, 220
——— Dedham, 653
——— Denham, 35
——— St. Devereux, 506
——— Dilwyn, 54
——— Donington, 744
——— Donyland (Eaſt) 592
——— Dunchurch, 553
——— Dun's Tew, 398

E.

Rex *v.* Inhabitants of Eakring, 320
——— East Bridgeford, 133
——— Donyland, 592
——— Ilſley, 723
——— Knoyle, 151
——— Eaton, 47
——— St. Ebb's, 289
——— Eccleſal Bierlow, in Sheffield, 562
——— Empingham, 791

F.

F.

Rex v. Inhabitants of Fifehead Magdalen, *Page* 116
——— Fittleworth, 238
——— Framlingham, 748
——— Fremington, 416
——— Friendſbury, 644
——— Frome Selwood, 565
——— Fulham, 488

G.

Rex v. Inhabitants of Gainſborough, 586
——— Garway, 632
——— St. George, Hanover Square, 12, 278, 692
——— Southwarke, 283
——— St. Giles in the Fields, 2, 798
——— Goodneſtone, 251
——— Grafton, (Manor of) 101
——— Great Bedwin, 163, 584
——— Chart, 194
——— Torrington, 428
——— Greenwich, 243

H.

Rex v. Inhabitants of Hacheſton, 287
——— Halifax, 806
——— Hanbury 322
——— Harrowby and Rawſby North 102
——— Hasfield 147
——— Hatfield, (Biſhop's) 439
Rex v. Inhabitants of Headcorn, *Page* 253
——— Hedingham Sible, 112
——— St. Helen's, in Abingdon, 292, 735
——— Helton, 187
——— Heptonſtall, 88
——— Heyford, (Nether) 479
——— High and Low Biſhopſide, 381
——— Higher Walton 162
——— Hilperton, 227
——— Himley, 115
——— Hitcham, 489, 504
——— Holbeck, 198
——— Honiton, 680
——— Horſley, 385

I.

Rex v. Inhabitants of Ideford, 821
——— Ilam, 304
——— Ilmington, 566
——— Ingleton, 560
——— Ipſley, 650
——— Ironacton, 153

K.

Rex v. Inhabitants of Keynſham, 429
——— King's Norton, 152
——— King's-weare, 839
——— King's-wood, 392
——— Kirkby Stephen, 664
——— Kniveton, 499
——— Knoyle, (Eaſt) 151

L.

TABLE of the NAMES of CASES.

L.

Rex v. Inhabitants of Ladock, *Page* 179
——— St. Lawrence, (Wooton) 581
——— St. Lawrence's in Winchester, 588
——— Leeds, 524
——— Letchlade, 380
——— Leverington, 276
——— Lidney, 1
——— Llandverras, 571
——— Llanrhydd, 658
——— Llanvair Dyffryn Clwyd, 236
——— Lockerly, 315
——— Lower Swell, 436
——— Walton, 100
——— Lowes, 825
——— Lowther 674
——— Luffington, 232
——— St. Luke's, in Middlesex, — 542

M.

Rex v. Inhabitants of Macclesfield, 458
——— Madington, 675
——— Madley, 202
——— Mansfield, 76
——— Marden, 311
——— Martley, 120
——— Marwood, 386
——— St. Mary Kallendar's Winchester, 274
——— St. Mary Whitechapel, 55
——— St. Matthew's, Bethnal-Green, 482, 574
——— St. Maurice's, in Winchester, 27, 296
Rex v. Inhabitants of Mawnan *Page* 290
——— Mayfield, 453
——— Melborne, 244
——— Merevall, 661
——— Milwich, 433

N.

Rex v. Inhabitants of Natland, 793
——— Naveſtock, 719
——— Nether Heyford, 479
——— Netherton, 139
——— Newnham, 756
——— Newſtead, 669
——— Newton, 157
——— (Bank) 455
——— New Windſor, 19
——— St. Nicholas in Harwich 171
——— Ipſwich, 91
——— Normanton, 213
——— North Owram, 145
——— Norton, 122
——— Notten, 629
——— Nutley, 701
——— St. Nyott's, 132

O.

Rex v. Inhabitants of Oakhampton, 5
——— Offerton, 802
——— St. Olave's, Southwarke, 283
——— Openſhaw, 522
——— Oſgathorpe, 261
——— Over, 746
——— Oulton, 64
——— Owram, (North) 145
——— Ozleworth, 302

P.

Rex v. Inhabitants of Painſwick, *Page* 465, 783
——— St. Peter's in Dorcheſter, 513
——— Nottingham, 391
——— Worceſterſhire, 25
——— Petham, 154
——— St. Petrox, 248
——— Portſea, 834
——— Potter Heigham, 690
——— Preſton, near Faverſham, 486
——— upon the Hill, 77

R.

Rex v. Inhabitants of Rawſby North, 102
——— Richmond, 740
——— Ringwould, 840
——— Rooding, (Aythrop) 412
——— Roſs, 688
——— Rumſey infra, 640

S.

Rex v. Inhabitants of St. Agnes, 671
——— St. Botolph's, without Biſhopſgate, 367
——— St. Cuthbert's, Bedford, 817
——— St. Devereux, 506
——— St. Ebb's, 289
——— St. George's, Hanover Square, 12, 278, 692
——— Southwarke, 283,—
——— St. Giles's in the Fields, 2, 798
——— St. Helen's, in Abingdon, 292, 735
——— St. Iſſey, 826
Rex v. Inhabitants of St. Lawrence, (Wooton) *Page* 581
——— St. Lawrence's in Wincheſter, 588
——— St. Luke's in Middleſex, 542
——— St. Margaret's, New Fiſh Street, 677
——— St. Margaret's, in Lincoln, ——— 728
——— St. Mary Kallendar's, in Wincheſter, 274
——— St. Mary Magdalen's, Taunton 402
——— St. Mary Whitchapel 55
——— St. Matthew's, Bethnal-Green 482, 574
——— St. Maurice's, in Wincester, 27, 296
——— St. Michael's in Bath 731
——— St. Nicholas, in Harwich, 171
——— St. Nicholas, Ipſwich, 91
——— St. Nyott's, 132
——— St. Olave's, Southwarke 283
——— St. Peter's, in Dorcheſter, 513
——— Nottingham, 391
——— Worceſterſhire, 25
——— St. Petrox, 248
——— Salford, 516
——— Sandwich, 44
——— Sarratt, 73
——— Selwood, (Frome) 565
——— Sheffield, (Eccleſal Bierlow in) 562
——— Sheffield, (Weſt) 307
——— Shenſton, 468, 474
——— Sherborne, 182
——— Silcheſter, 551

Rex

Rex v. Inhabitants of Silton, Page 269
—— Southwold, 140
—— Sowerby, 408
—— Sowton, 125
—— Spawnton, 801
—— Spotland, 527
—— Standish cum Langtree, 150
—— Stanfield, 205
—— Stanlake, 627
—— Stapleton, 649
—— Staunton under Bardon, 558
—— Stepney, 23
—— Stockbridge, 739
—— Stockland, 169, 508
—— Stockley Pomroy, 762
—— Stratton, 272
—— Sudbury, 373
—— Sundrish, 7
—— Sutton St. Nicholas, *alias* Lutton, 276
—— Swell, (Lower) 436

T.

Rex v. Inhabitants of Tamworth 770
—— Tavistock, 578
—— Taunton St. Mary Magdalen 402
—— Tedford, 57
—— Tew, (Dun's) 398
—— Titchfield, 511
—— Torrington, (Great) 428
—— (West) 293
—— Tostock, 737

U.

Rex v. Inhabitants of Ufculm, 138
Rex v. Inhabitants of Uffculme, Page 430
—— Underbarrow and Bradley Field, 545
—— Upmerden, 214
—— Uttoxeter, 538

W.

Rex v. Inhabitants of Walpole St. Peter's, 638
—— Walton, (Higher) 162
—— (Lower) 100
—— Warblington, 787
—— Weddington, 766
—— Westbury, 470
—— Westerleigh, 753
—— Weston, 166
—— West Shefford, 307
—— Torrington, 293
—— Weyhill, 491
—— Whitechurch, 365
—— Whitechurch Canonicorum, 540
—— Widworthy, 109
—— Wincaunton, 299
—— Windsor, (New) 19
—— Wingham, 223
—— Winterbourn, 520
—— Wobourn, 785
—— Woodchester, 191
—— Woolstanton, 129
—— Wooton St. Lawrence, 581
—— Worth, 90
—— Wrinton, *alias* Wrington, 280
—— Wyke, 264

Y.

Rex v. Inhabitants of Yarmouth, 379

Trinity Term

6 & 7 Geo. 2. 1733.

Rex *v.* Inhabitants of Lidney.

No. 1. *Conditional* Hiring for a Year, with a proper *Service*, will gain a Settlement. See S. C. in 2 *Str.* 950. and in *Seſſions Caſes*, Edit. 1750, Vol. 1. No. 175.

IN *Eaſter* Term laſt a Motion was made to quaſh an Order of Seſſions confirming an Order of two Juſtices made for the Removal of *Martha Brewer* from *Stroude* to *Lidney*.

The Caſe appeared to be this:——She was hired to *William Wake*, in the Pariſh of *Stroude*, for a *Quarter* of a Year: And *if* her Maſter and ſhe *liked one another*, ſhe was to *continue* for a Year, and to have 3 *l.* for her Year's Wages. She entered into the ſaid Service, and continued therein one *whole* Year, and received the ſaid Wages of 3 *l.*

Upon ſhewing Cauſe, now, againſt quaſhing the Orders, it was argued, that, as it was in *Martha Brewer*'s Election, during the firſt Quarter, "Whether ſhe would continue *or not*," ſhe, conſequently, could not be originally hired *for a Year*.

But the Court held this *conditional* Hiring to be a *good* Hiring *for a Year*; ſince the Maſter and ſhe *did* like one another, and a Year's Service was actually *performed* under it.

V. Poſt. No. 7. *Rex* v. *Inhabitants of New Windſor*, *H.* 8. G. 2. *B. R. Poſt.* No. 71. *Rex* v. *Inhabitants of Atherton*, *H.* 16 G. 2. *B. R.* In both which Caſes, ſuch *conditional* Hirings were holden good. *Poſt.* No. 101. *Rex* v. *Inhabitants of St. Ebb's*, *H.* 1748. (without Defence.) Alſo, *Poſt.* No. 109. *Rex* v. *Inhabitants of Ilam*, *M.* 1751. *B. R.* as to the effect of a *retroſpective* hiring.

Per Cur. RULE MADE ABSOLUTE.

No. 2.

Rex *v.* The Inhabitants of St. Giles's in the Fields.

Children of a *firſt* Marriage do not follow the Settlement of their Mother, in right of a *ſecond* Huſband, unleſs for Nurture; and even then, at the Charge of the Pariſh, where they are legally ſettled.

See S. C. in *Seſſions Caſes*, Edit. 1750, Vol. 1. No. 171. where the *Facts* of this Caſe are rightly ſtated; but the Report of it is left imperfect.

*3 *Salk.* 259. S. C.

V. *Seſſions Caſes*, Edit. 1750, Vol. 1. No. 69.

2 Lord *Raym.* 1474. and *Foley* 254.

†See *alſo*, *Foley*, 256. & *Str.* 746. S. C.

AN Order of Seſſions, made upon Appeal from an Order of two Juſtices, adjudged the Settlement of *Jacob Maile*, an Infant of nine Years of age, *not* to be in St. *Clement's*, but in St. *Giles's*, (to the former of which Pariſhes the two Juſtices had removed him from the latter) upon this Caſe ſtated; *viz.* His *Father's* Settlement *could not be diſcovered:* But his MOTHER had formerly gained a Settlement by Service in the Pariſh of St. *Clement Danes*. This was her laſt Settlement before her Marriage. AFTER her Huſband *Maile's* Death, ſhe married a *ſecond* Huſband, *John Simcock*, who was ſettled in St. *Giles's in the Fields*. The Seſſions quaſhed the original Order, which removed the Infant-Pauper from St. *Giles's* to St. *Clement Danes*.

In *Trinity* Term laſt (1732, 5 and 6 *G.* 2.) a Motion was made to quaſh this Order of Seſſions. And Serjeant *Baines*, who moved it, cited the Caſe of *Cumner* and *Milton*, 2 *Salk.* 528*. where Mr. J. *Powell* ſaid that, "If a Widow, having Children under ſeven "Years old, marries a Man of another Pariſh, the Children ſhall "go with the Mother for Nurture; but after ſeven Years of Age, "they ſhall be ſent back to the Pariſh where the Father was "ſettled."

Afterwards, in the ſame Term, Cauſe was ſhewn by Serjeant *Corbet* againſt quaſhing this Order of Seſſions. He argued, that the Child ought to be ſettled where the *Mother* is, by her Marriage, ſettled. He cited the Caſe of St. *George's Southwark* and St. *Katharine's*, *Michaelmas* 1714, and alſo the Caſe of *Paulſpury* and *Woodend*, *Hilary* 1726, "where a Widow gained a Settle-"ment by being admitted into a ſmall Copyhold; and it was ad-"judged, that ſhe having gained ſuch a Settlement, her Child fol-"lowed her Settlement." Vide *Seſſions Caſes*, Edition 1750, Vol. 1. No. 116. and 2 Lord *Raymond*, 1473. †.

Cur. In thoſe Caſes the Woman had gained a Settlement in *her* own *Right:* Whereas, here, ſhe gains it *not* in her *own* Right, but in Right of her *Huſband*.

RULE ENLARGED.

In this Term, it came on again: And in Anſwer to the Objection, "That the Child ought to be ſent to the laſt Settlement "of the Mother *before* her Marriage," the ſame Caſes of St. *George's* and St. *Katharine's* and *Paulſpury* and *Woodend* were cited,

cited, to prove " that after the Death of the Father, the Children " ſhall be removed to the *new-gained* Settlement of the Mother."

St. Giles in the Fields and St. Clement Danes.

The Counſel on the other Side agreed, that where a Woman has a Settlement of her *own*, the Children ſhall go to the laſt of ſuch of her *own* Settlements: But her laſt Settlement in the preſent Caſe is *not* acquired in her *own* Right; and therefore is not within that Rule. In the Caſe of *Paulſpury*, a Copyhold in *Paulſpury* deſcended to the Widow; and the Child removed with her, *as Part of her Family*: And beſides, that was in *her own Right*. So in the Caſe of St. *George's* and St. *Katharine's*, the Child went *as Part of the Family* of the Wife. In the Caſe of *Cumner* and *Milton* (2 *Salk.* 528.) *Powell* J. laid it down for Law, " That the Mother *cannot* " gain a Settlement for her Children by a *former* Huſband in the " Pariſh where her *ſecond* Huſband is ſettled; being under Coverture, " and having a Settlement there herſelf ONLY *as Part of her Huſ-* " *band's Family*, from whom ſhe cannot be ſevered:" And no one ſaid any Thing to the contrary of what he ſo laid down. 1 *Salk.* 482. *pl.* 35. *Anonymous*. " If a Man ſettled at *A.* marries a poor Woman " who is ſettled at *B.* having Children by a former Huſband, " his Wife ſhall be removed with him to *A*; but *her Children*, ſuch " of them as are *above ſeven Years old*, ſhall *not* be removed. (Thoſe " under ſeven Years of Age ſhall indeed be removed; but that only " for Nurture: For they ſhall be *kept* at the Charge of the other " Pariſh.)"

Mr. J. *Probyn*. Where the Father has a Settlement and dies, and the Children under ſeven Years of Age are removed with the Mother, it is for *Nurture* only: And in ſuch Caſe, the Children ſhall at the Age of ſeven be removed *back* to the Place of the Father's *laſt* Settlement.

By the ſecond Marriage of this Woman, ſhe has acquired a Settlement in St. *Giles's*; and conſequently her Settlement in St. *Clement's* is *gone:* And it ſeems that the Son muſt be ſent to the Place where the Mother is ſettled at the *Time of the Order made*.

Mr. J. *Lee*. I think the Queſtion has been *determined*. In a Caſe in *Carthew* 449, between the Pariſhes of *Wangford* and *Brandon*, the Fact was, that three poor Men of *Wangford* came into the Pariſh of *Brandon*, and there married with three poor Widows of *Brandon*, who received Relief, *&c*; each of which Widows had

N. B. This is the ſame Caſe as that in *Salk.* 482. *pl.* 35. (which is there anonymous.) See alſo *Carthew* 279, 280. between the Inhabitants of *Shermanbury* and *Bolney*, S. P. accord.

St. Giles in the Fields *and* St. Clement Danes.

Children by their former Husbands; (some under seven, some above seven:) And it was holden that the Children *did* NOT *gain a Settlement in* Wangford, nor were removable thither, to charge that Parish. As to the *Nurse*-children, *they* indeed might be sent thither for *Nurture only:* Yet still the Parish of *Brandon* must relieve them there, and not the Parish of *Wangford.* But the Children *above* the Age of seven Years ought not to be removed *at all*; being settled Inhabitants in the Parish of *Brandon.* And the Removal of the Mother shall have *no Influence* on the Settlement of their Children.

See this point fully discussed and settled, in the Case of *the King* v. *Inhabitants* of *Hemlington*, *H.* 17 *G.* 3. B.R. *Douglas* 19. *in notis.*

Mr. J. *Page* thought as Mr. Justice *Lee* did; and agreed that wherever Children are sent for Nurture, the Charge is to be paid by the Parish where they are legally settled.

However, this Case was again adjourned, for the present. But

Upon the last Day of this Term, Mr. J. *Page* and Mr. J. *Lee* were clear, upon the Case in *Carthew*, (which, they said, they had again particularly looked into:) But as Mr. J. *Probyn* (who was now absent) had, when present, been of another Opinion; they at first adjourned it again:

But afterwards they declared that, they were thoroughly satisfied; and therefore quashed the Order of Sessions.

The Rule was this:

I have transcribed the Rule itself; because I believe that in strict point of Fact, the Court happened, by mere Mistake, to *pronounce* a *Confirmation* of the Order of Sessions; though they meant to quash it: So that possibly some Gentlemen may have taken their Notes erroneously in this Respect.

Per Cur. It is ordered that the Order of Sessions made in this Cause for quashing an original Order made in the same Cause, for the Removal of one *Jacob Maile* from the Parish of St. *Giles's in the Fields* in the said County to the Parish of St. *Clement Danes* in the County aforesaid, be quashed for the Insufficiency thereof; and that the said original Order be affirmed.

Eaſter Term

7 Geo. 2. 1734.

Rex *v.* Inhabitants of Oakehampton.

No. 3.

A *Tide-waiter*, aſſeſſed and paying for his Salary to the Land-tax, gains a Settlement; although repaid by the *Collector*. See a Scrap of this Caſe in *Seſſions Caſes*, Edit. 1750. Vol. 1. No. 205.

ON *Monday* 19th of *November* laſt (1733) a Motion was made by Mr. Serjeant *Chapple*, to quaſh an Order of Seſſions confirming an Order of two Juſtices for the Removal of *Mary Tooke*, Widow, and her Children from *Kenton* to *Oakehampton*.

It is ſtated in the Order of Seſſions, "That her Huſband was a "Tide-waiter reſiding in *Kenton*; and had a Salary, *for which* he "was *rated* by the Aſſeſſors of the LAND-*Tax* in *Kenton*, where "he ſeveral Years reſided;" and that he was therefore rated to the Land-tax in *Kenton*; and that was paid *ſome* Time *by himſelf*, and REPAID to him by the Collector of the Cuſtoms; and afterwards, *by the Collector* of the Cuſtoms. They adjudge that this was *not* a Settlement in *Kenton*: And therefore confirm the original Order.

Mr. J. *Page* and Mr. J. *Lee* deſired him to look into it; and move it again.

Upon renewing the Motion on the *Friday* following (the 23d of *November*), it was argued, by Serjeant *Chapple*, that this is NOTICE within 3 & 4 *W. & M. c.* 11. *ſect.* 6.

In *Comb.* 419. between *Foſton* and *Dalbury* Pariſhes, or *Blood's* Caſe, *Holt* ſaid, "That Payment of the Land-tax had been held a "*ſufficient Notice*." 5 *Mod.* 331. S. C.

In *Comb.* 282. it was ruled, "That the *rating* a poor Occupier "of a Houſe, FOR HIS LANDLORD, to the King's Taxes, is a "*Rating him* within the new explanatory Act to make a Settle-"ment."

By 9 *G.* 1. *c.* 7. *ſ.* 6. there is a Proviſion that a Tax to the Scavenger's Rate or High-way ſhall *not* gain a Settlement. Now this is a Tax of a *higher* Nature: And therefore *not* being provided againſt, it ſtill gains a Settlement.

RULE TO SHEW CAUSE.

Upon

OAKEHAMPTON *and* KENTON.

Upon ſhewing Cauſe (on *Monday* 27th *May* 1734) it was argued by Mr. *Strange*, in Support of the Order of Seſſions, "That a Taxation WITHOUT *Payment* gains no Settlement." So is 2 *Salk.* 523. between the Inhabitants of *Talborn* and *Boſton*, expreſsly.

Then the Queſtion is, "Whether he has PAID his Share towards "the public Taxes or Levies of the Pariſh." And it is plain that he has *not:* For, it was *not* his *own* Money; but the Money of the *Collector*.

The Statute of 3 & 4 *W. & M. c.* 11. *ſect.* 6. makes a Payment towards the publick *Taxes* or Levies (in general) of the Pariſh, to be neceſſary to a legal Settlement in it. It is in the *plural:* And therefore the Payment of one *ſingle Tax* is not ſufficient.

Lord *Hardwicke*. Suppoſe a *Landlord* had agreed to *reimburſe* his *Tenant*; would not the Tenant be ſettled? The Collector did not pay it to exonerate the *Pariſh*, but to *better* the Man's *Salary*.

Cur. It has been ſettled, "that *Land-Tax is a Pariſh*-Tax, "within the Act:" And his being taxed *for* his Salary makes no difference.

RULE MADE ABSOLUTE *for quaſhing the Orders.*

See the Caſes of
Rex v. *Inhabitants of Bramley, Hil.* 9 *G.* 2. 1735. (*Poſt.* No. 22.) S. P. *accord.*
Rex v. *Inhabitants of Chiding fold, H.* 30 *G.* 2. 1757. (*Poſt.* No. 132.) S. P. *accord.*
Rex v. *Inhabitants of Fulham, Mich.* 33 *G.* 2. 1759. (*Poſt.* No. 155.) S. P. *accord.*
Rex v. *of Inhabitants of Painſwick, T.* 31 *G.* 2. (*Poſt.* No. 148.) S. P. *accord.*
Rex v. *Inhabitants of Openſhaw, E.* 4 *G.* 3. (*Poſt.* No. 168.) S. P. *accord.*

Trinity

Trinity Term

7 & 8 Geo. 2. 1734.

Rex v. Inhabitants of Sundriſh.

No. 4.

Wedneſday 3d *June* 1734. A Perſon cannot be removed from his own *leaſehold* Eſtate, coming to him as Deviſee and Executor. *V. Seſſions Caſes*, Edit. 1750, Vol. 1. No. 200. S. C. and alſo *Caſes in B. R.* 7, 8, 9, 10 *G.* 2. S. C. *pa.* 76. incorrectly named and ſtated.

TWO Juſtices removed *Thomas Gates* and *Mary* his Wife and *Elizabeth* their Daughter from *Hever* to *Sundriſh*; and upon Appeal to the Seſſions, they confirmed the Order of the two Juſtices.

The Caſe ſtated on the Order of Seſſions was this: *Thomas Pereh*, by Indenture dated 25th *March* 1701, demiſed to *Thomas Gates*, the Father of *Thomas Gates* the Pauper, one Meſſuage or Cottage with a Garden, Orchard and Backſide, *&c.* in *Hever*, for ninety-nine Years, at 5*s. per Annum*: *And the ſaid* 5*s. was the full and moſt improved* RACK-*Rent, for any Thing that appeared to the contrary. Thomas Gates*, the Father, entered upon the ſaid Cottage by Virtue of the ſaid Leaſe; and lived in it, under the ſaid Leaſe, to the Time of his Death. By his laſt Will, he *deviſed* the ſaid Meſſuage and Premiſſes, and all other his Eſtate both real and perſonal, to the ſaid *Thomas Gates* the Son, his Heirs, Executors, Adminiſtrators and Aſſigns, upon Condition that he pay, or ſecure to be paid, unto *Frances* his Mother 20*l.* towards her Maintenance, if ſhe ſhould live to expend that Sum; and made him *ſole* EXECUTOR, and died. *Thomas Gates* the Son proved the ſaid Will, and entered upon the ſaid Premiſſes by and under the ſaid Leaſe and Will, and LIVED THEREIN UNTIL *and* AT *the Time* of making the original Order. But it did not appear that he had paid or ſecured the ſaid 20*l.* or any Part thereof; the ſaid *Frances*, the Mother, dying in a very ſhort Time after *Thomas* the Father.

The Seſſions held it *not* to be a Settlement in *Hever*: And therefore confirmed the Order.

On *Friday* 10th *May* 1734, Mr. *Strange* moved to quaſh this Order of Seſſions.

The General Queſtion was, "Whether this *Thomas Gates* the "Son be removable on 13 & 14 *Car.* 2. *c.* 12." And, to prove "that

SUNDRISH *and* HEVER. 1 *Seſſions Caſes*, 122. S. C.

"that he was not removable," he cited the Caſe of *Murſley* and *Grandborough* Pariſhes, 1 *Str.* 97. where it was determined, "that "a Man, who comes to ſettle upon *his own*, cannot be removed "from it."

And the ſame Thing had been before determined in the Caſe of Freeholds, 2 *Salk.* 524. between the Pariſhes of *Ryſlip* and *Harrow*; and alſo in the Caſe of Copyholds of inconſiderable Value. *v. infra.*

Upon ſhewing Cauſe againſt quaſhing the Orders, on *Saturday* the 25th of laſt *May*, the Counſel for *Hever* Pariſh urged, that the VALUE of the Premiſſes is principally to be conſidered.

They admitted that it has been determined, by Conſtruction, "that a Perſon cannot be removed from his *Freehold:*" And the Reaſon is, "becauſe it would be a Diſſeiſin." And the Caſe of Copyholds was analagous to that of Freeholds. But *this* Man is removable within the expreſs Words of the Act; ſince the Value is LESS *than* 10*l. a Year.* It makes no Difference, that he was *Executor* or *Deviſee* of the original Leſſee: For he is conſidered as *Aſſignee*; and there is no Difference between the Caſe of an Aſſignee and that of an original Leſſee. If an Aſſignee ſhould be holden to be irremovable, every Pauper who had a Mind to ſettle in a Pariſh would get an *Aſſignment* of a Leaſe of a Tenement of ſmall Value, inſtead of taking an original Leaſe, and thereby render himſelf irremovable.

In the Caſe of *Murſley* v. *Grandborough*, they ſuppoſed that the Judges muſt have determined upon the *Value:* For there is no *legal* Difference between *one Term* for Years and *another*.

It was anſwered by Mr. *Strange*, That this Matter was *ſettled* in the Caſe of *Murſley* v. *Grandborough*; which was a Term for ninety-nine Years, at one Shilling *per Annum:* And the Perſon removed came to it by marrying the Adminiſtratrix of the *ceſtuy que truſt* of the Reſidue of the Term, (which had been aſſigned in Truſt.) And there it was ſaid, "that the Court could not enter into the Value."

In the Caſe of a *Copyhold*, a Man cannot be removed from his *own*, though of very ſmall Value. This was determined *P.* 11 *Ann.* in a Caſe between the Pariſhes of *Harrow* and *Edgware*, where the yearly Value was only 25*s.* Nor indeed can a Man be at all removed from what he comes to ſettle upon *as* his *own*, under the Statute of 13 & 14 *C.* 2. *c.* 12.

This Caſe is cited in that of *Murſley* and *Grandborough, ſupra.*

It was now argued a ſecond Time, and the Counſel who argued in Support of the Orders ſaid that the Caſe of *Murſley* v. *Grandborough* was upon a *beneficial* Leaſe. They obſerved that it is only a ſingle Caſe: And Mr. Juſtice *Powys* differed from the Reſt of the Judges.

And

And the Court rejected a *ſingle* Authority, this very Term, in the Caſe of *Rex.* v. *Penelope Smith.* SUNDRIDGE and HAVERS.

They inſiſted that the preſent Caſe is directly within the Act: Which the Caſe of *Murſley* v. *Grandborough* directly, as they aſſerted, contradicts.

The Counſel for quaſhing the Orders anſwered, That it is an adjudged Point, "That a *Freehold* and likewiſe a *Copyhold*, (though "EVER *ſo ſmall)* make a Settlement." 2 *Salk.* 524. between the Pariſhes of *Ryſlip* and *Harrow.* And between *Harrow* and *Edgware* P. 11. *Ann. B. R.* And the Court have ſince gone further, even to Terms for Years, in the cited Caſe of *Murſley* v. *Grandborough.*

It is objected that "that was a *beneficial* Leaſe." But the *whole* improved Value was *only* 30*s. per Annum:* So that *That* makes no Difference. The Pauper was conſidered as *having* come to it *by* OPERATION *of* LAW. All his Title to the preſent Poſſeſſion was in Right of his *Wife*; and the *greateſt Part* of the Cottage was *let out:* Yet the Court held that the marrying a Woman who had only ſo *ſmall* a Part of it, *made* him *ir*removable. The Court only conſidered the *legal Property* of the Party, and NOT the *Value.*

In the preſent Caſe it is not ſtated abſolutely, "that the improved Rent *was no more* than 5*s. per Annum.* But, be that as it may, The Pauper came to it AS *a* PURCHASER, *under his Father's Will:* And therefore he can't be removed from it.

Lord *Hardwicke.* This Caſe of removing a Man who *lives upon his* OWN, is a Caſe of a tender Nature; And the Court ought not to give too readily into it.

It has been adjudged, in Caſe of *Freehold*, and alſo of *Copyhold*, "that it cannot be done." And I do not ſee the Difference between them and *Leaſe*hold; unleſs Leaſehold be within the *Words* of the Act. Therefore the *Words* of 13 & 14 *C.* 2. *c.* 12. are material. They are—"Whereas poor People are not reſtrained from "*going from one Pariſh to another*; and therefore do endeavour to "ſettle themſelves in thoſe Pariſhes where, &c; then, to *another* "*Pariſh*; and at laſt become Rogues and Vagabonds: Therefore it "is enacted, That upon any *ſuch* Perſon or Perſons *coming* ſo *to* "*ſettle as aforeſaid* in any Tenement under the yearly Value of 10*l.* "two Juſtices may, upon Complaint of, &c. within forty Days, "by their Warrant remove them."

It is plain that the *Meaning* of the Act was to remedy the Evil ariſing where poor People came to ſettle as is there *before mentioned.*

Sandham and Hyer.

Now Freeholds and Copyholds are not within the Words of the Act. And though this be a Leaſe, yet it was made ſo long ago as in 1701: And this Man comes in under his *Father's* Will.

It is (together with other Things) charged with 20 *l.* payable to his Mother, for her Maintenance: And it does not appear that any Evidence was laid before the Juſtices of the *Value* of this Leaſe.

In the Caſe of *Murſley* v. *Grandborough*, it was NOT *a beneficial* Leaſe of the *whole*; for a great Part was *let off*.

This appears to be a Cottage, Garden, Orchard and Backſide. The Pauper did not come to ſettle upon it AS *a* RAMBLER; but derived his Right UNDER *his* FATHER. It would be too hard to give the Juſtices Authority to remove a Perſon ſo ſituated.

Therefore I think the Juſtices are miſtaken in their Opinion: And the Orders ought to be quaſhed.

Mr. J. *Page*. I do not ſee that the Party can be removed *from his* OWN, *if* he comes by it *fairly*. Indeed if he ſhould outlive the Leaſe, he may then be removed.

In an Action of Treſpaſs between St. *Peter's* and St. *Clement's*, Lord Ch. J. *Holt* held, "that the Pauper could *not* be removed from "his *own* Houſe, where there is *no Fraud*."

Mr. J. *Probyn*. The *Intention* of the Act was manifeſtly againſt Perſons who came into Pariſhes on Purpoſe to gain a Settlement: And the Reaſon of the fixing ten Pounds a Year for the Value of the Tenement, is, becauſe it requires ſuch a Stock that the Man is not to be preſumed likely to become chargeable. The Act intends to prevent People from fraudulently ſettling in a Pariſh by taking a Leaſe *themſelves*, under the yearly Value of 10 *l.* But *this* Man has it by a PRECEDENT *Right*; and his Right to enter upon it is as good as if it were a Freehold or Copyhold: He comes into it *upon a* TITLE; not by *Fraud*.

Ever ſo little in Point of Value is *enough* to make a Perſon irremovable from Freeholds and Copyholds: And in the Caſe of *Murſley* v. *Grandborough*, it is carried on to *Leaſe*hold. That Cottage was but 30 *s.* a Year in the whole; and only *two Rooms* at moſt remained to the Pauper's Wife. Therefore that Opinion was *not* given upon the *Value*; but *becauſe* it was *his* OWN, and *therefore* he was *not* removable from it.

Theſe Premiſſes muſt be of *greater* Value than 5 *s. per Annum*. The Juſtices do not appear to have *inquired* into the Value. The Father has charged it, together with his other Eſtate, with 20 *l.* So that it does not indeed appear that this *alone* was worth ſo much: But,

But, on the other Side, it does not appear that this Man *had* any *other* Eſtate; and probably he had not, or elſe they would not have removed him.

This *does* therefore appear, I think, to be a *beneficial* Leaſe. But *that* is NOT my principal Reaſon: For it is *his* OWN; and he is NOT *removable from his own*. And if a Man ſtays forty Days in any Houſe in a Pariſh, from which he is *not removable*; from *that* Time, he is *ſettled there*.

Mr. J. *Lee*. This Caſe is, as it ſeems to me, within the *Letter* of 13 & 14 *C*. 2. *c*. 12. But it is plain that the Judges have *not* taken it upon the *Letter*, but conſidered the *Meaning* and Intention of it, and the *Preamble*, which deſcribes *Wanderers* and Vagabonds coming into Pariſhes with bad Views and Deſigns.

But *Free*holds and *Copy*holds and alſo *Leaſe*holds where a Man has a *Right*, where the Tenement is *his* OWN, are not within the Intention of the Act: And the Juſtices can *not* remove ſuch Perſons from their *own*.

So before 9 *G*. 1. *c*. 7. *ſect*. 5. if a Man made *ever ſo ſmall a Purchaſe*, he gained a Settlement; even though he made it with an *Intent* to gain a Settlement. Therefore the Statute requires it to be of a certain Value; namely, of the Value of 30 *l*. and that to be *bonâ fide* paid.

In the Caſe now before the Court, the Pauper lived in a Tenement which appears to be his *own*: And he had a Right to it *as* Executor and Deviſee of his Father.

Therefore he did *not* COME into the Pariſh of *Hever to ſettle himſelf*, but to take the Benefit of his OWN; from which, as being his own, and coming to him in this Manner, the Juſtices could *not* remove him *.

Per Cur. Therefore the Rule muſt be made abſolute, to quaſh the Orders.

BOTH ORDERS QUASHED.

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* *V. Rex. v. Inhabitants of Marwood*, Hil. 1756, 29 Geo. 2. B. R. *(Poſt.* No. 124.)
Rex v. *Inhabitants of Ingleton*, *E*. 6 *G*. 3. *(Poſt.* No. 179.)
Rex v. *Inhabitants of Ilmington*, *T*. 6 *G*. 3. *(Poſt.* No. 182.)

Michaelmas Term

8 Geo. 2. 1734.

No. 5. *Thurſday* 28th *Nov.* 1734.

If an Apprentice, by the *Conſent* of his Maſter, reſides in another Pariſh for 40 Days, he gains a Settlement therein. *V. Seſſions Caſes*, Ed. 1750, Vol. 2. No. 138. *Str.* 1001. S. C.

Rex. *v.* Inhabitants of St. George Hanover Square.

ON *Wedneſday* the 20th Inſtant a Motion was made to quaſh an Order of Seſſions, confirming an Order of two Juſtices made for the Removal of *Alice Wheeler* from the Pariſh of St. *James Weſtminſter* to the Pariſh of St. *George Hanover Square*; and alſo to quaſh the ſaid original Order.

The Caſe ſtated by the Seſſions for the Opinion of this Court, was, That this *Alice Wheeler*, a Pariſh Child, was, by the Churchwardens and Overſeers, with the Aſſent of two Juſtices, bound Apprentice by Indenture, to *George Leiceſter* of the Pariſh of St. *George Hanover Square*; where ſhe ſerved forty Days, and gained a Settlement. Afterwards, and during her Apprenticeſhip, ſhe was, by *parol* Agreement, *hired out by her Maſter* to *John Hall*, in the Pariſh of St. *Mary le Bon*; where ſhe reſided and worked above forty Days, (*to wit*, for the Space of one Year and upwards,) *the ſaid Apprenticeſhip continuing:* During which Time, her Maſter *George Leiceſter received her Wages*, and *found her in Cloaths.*

The Seſſions held her Settlement to be in the Pariſh of St. *George Hanover Square:* And therefore diſallowed the Appeal, and confirmed the Order of the two Juſtices.

The Queſtion was, Whether her ſerving above forty Days in the Pariſh of St. *Mary le Bon*, with the Conſent and Approbation of her Maſter, did not gain her a Settlement in that Pariſh.

The Counſel for the Motion (who were for the Pariſh of St. *George Hanover Square*) argued that it did. And they cited the Caſe between the Pariſhes of *Caſtor* and *Aicles*, in 1 *Salk.* 68. as directly in Point: Alſo, the Caſe of *Allhallows on the Wall* and St. *Olave's* in *Southwark*, in 1 *Strange* 554. and the Caſe there cited, between the Pariſhes of *Holy Trinity* and *Shoreditch*, reported in 1 *Strange* 10.

But the Counſel, who ſhewed Cauſe againſt quaſhing theſe two Orders,

Orders, argued (on Behalf of the Pariſh of St. *Mary le Bon*) That this ſubſequent *parol* Agreement cannot refer to the firſt Agreement, ſo as that the Service under it ſhall be conſtrued to be a Service under the original Agreement which was by Indenture. It is true an Aſſignment *by Deed* might have this Effect: (1 *Salk.* 68. *Keb.* 304. *&c.*) But it was a great while before even an Aſſignment by Deed was held good. St. George Hanover Square. *and* St. James Westminſter.

But a *parol* Agreement muſt be entirely void, as to the Purpoſe of gaining a Settlement: For, the Agreement being void, the Service muſt be void. It was ſaid, in the caſe of *Rex* v. *Inhabitants of Buckington*, *P.* 10 *G.* 1. *B. R.* "That where one is bound by "Indenture, ſuch Indenture cannot be diſcharged but by Deed or "by the Seſſions: And a *parol* Agreement is of no Avail, whilſt "the Indenture ſubſiſts." Therefore the Settlement of the Apprentice is in the firſt Pariſh, and not in the ſecond. *V.* 2 Lord *Raym.* 1352. 1 *Stra.* 582. S. C.

The Service in St. *Mary le Bon* is to be conſidered as a Service to the firſt Maſter, under the ſubſiſting Indentures: And conſequently the Settlement will be in the Pariſh where the *Indenture* was made. In the Caſe laſt mentioned, the firſt Maſter was held to be intitled to the Wages; which is the Reaſon of that Caſe. Now here the Maſter is ſtated to have received the Wages.

In the Caſe of *Rex.* v. *Inhabitants of Ivinghoe*, *P.* 4 *G.* 1. the Court conſidered the Service of the Shepherd, who was hired by *Knight* for a Year, and, on *Knight's* quitting the Farm to *Smith*, ſerved out the Year with *Smith*, as a Service to the firſt Maſter, and as being only lent out by him to the ſecond; and ſo to have gained a Settlement under the firſt Hiring. So here, it is only a lending, by *Leiceſter*, of his Apprentice, to *Hall*: And the Settlement follows the Indenture. 1 *Stra.* 90. 92. 1 *Seſſ. Caſ.* 121. *Caſes of Settlements*, 109. S. C.

The Caſe of the *Holy Trinity* v. St. *Leonard's Shoreditch*, in *M.* 3. *G.* 1. materially differs from this Caſe. There, *Ferrer* was bound to *Truby*, with Intent that he ſhould ſerve *Green*; which he did for three Years. The Court held this to be the ſame as a Turning-over; and that *Truby* was only a Truſtee: And therefore they held it to be a Settlement in *Green's* Pariſh. But there it was ſtated upon the Order, "that there never was any Service or Intent to ſerve *Truby*."

So in the Caſe between the Pariſhes of *Allhallows on the Wall* and St. *Olave*, *Southwark*, the original Agreement was, "to ſerve the "other Maſter." *V.* 1 *Stra.* 554.

On the contrary, in Support of the Motion, it was argued, on Behalf of the Pariſh of St. *George Hanover Square*, That ſhe was hired

out

St. George Hanover Square. *and* St. James Westminster.

out by her Maſter to *John Hall* of St. *Mary le Bon*, and ſerved a Year to *Hall*. And although a parol Agreement does not deſtroy an Indenture; yet this Agreement amounts to a *Contract*: And it proves that the Service to *Hall* was with the Conſent of the Maſter. So that the Caſe of *Caſtor* v. *Aicles*, in *Salk*. 68. is directly in point for us. So alſo is *Allhallows on the Wall* v. St. *Olave, Southwark*: For there the Apprentice was aſſigned over by *parol*, the Indenture ſubſiſting; and it was held a Settlement in the ſecond Pariſh, where the Service was performed.

In the Caſe of the *King* againſt the *Inhabitants of Buckington*, the Apprentice ſerved his Maſter half a Year in *Buckington*; and his Maſter became a Bankrupt: Then he hired himſelf, without his Maſter's Conſent, in St. *Michael's, Sebington*, for a Year, and ſerved; and the Maſter afterwards delivered up his Part of the Indenture to the Apprentice. The Court held his Settlement to be in *Buckington*. But the Reaſon they gave was, "becauſe there was *no Conſent* "*of the Maſter*:" And they added, "that *if* he had let himſelf to *J.* "*N.* who lived in St. *Michael's, Sebington*, *with* his Maſter's Con- "ſent, his Service *would* have made a Settlement."

The Caſe of the *Holy Trinity* v. St. *Leonard's, Shoreditch*, is for us.

The Court will not take notice of a Truſt.

There is no Difference between an hired Servant and an Apprentice; but that the Apprentice muſt be bound by Indenture; and that the hired Servant muſt be hired for a Year, and ſerve for a Year: But in the other Caſe (that of an Apprentice) the laſt forty Days Reſidence and Lodging gains a Settlement.

In this Caſe *Alice Wheeler* continued the Servant of the firſt Maſter all the Time; and the firſt Maſter found her Cloaths and received her Wages: But the *laſt forty Days Service and Reſidence* being in St. *Mary le Bon*, ſhe muſt be ſettled there. 2 *Salk*. 533. between St. *Bride's* and St. *Saviour's* Pariſhes. *H.* 4 *Ann. B. R.*

The Apprentice's Settlement does not depend upon the Maſter, or upon the Place where the Indentures were made; but upon the *Place* where the Apprentice *ſerves and reſides the laſt forty Days*. The Settlement is in the Pariſh where the Apprentice *lodges*. *Rex* v. *Inhabitants of St. Mary Colechurch*. *Tr.* 3 *G.*

Lord *Hardwicke*. My Doubt is upon the ſtating of the Order: It does not ſeem to me to be fully ſtated.

Taking this as the general Propoſition—"That an Apprentice "is bound to a Maſter who may diſpoſe of him; and he hires him "out as a Servant, for a Year; and he thereupon ſerves forty Days:"

I think

I think it *is* a Settlement, within 3 & 4 *W. & M. c.* 11. For this is a *lawful* Hiring, becauſe the Maſter has the Power to hire him out. Therefore if it reſted upon *this* only, I ſhould think it a Settlement in St. *Mary le Bon*. ST. GEORGE HANOVER SQUARE *and* ST. JAMES WESTMINSTER.

But my Doubt is, "Whether this *was* a *lawful* Hiring." For the Child is ſtated to be bound Apprentice by the Pariſh-Officers by Aſſent of the Juſtices of Peace. Now the Maſter does not treat her *as* an Apprentice, but hires her out. Now if the Juſtices had a Power to take back this Apprentice, then it will *not* be a *lawful* Hiring for a Year.

I have no Doubt how the Settlement would be, where a Maſter has an *abſolute* Power over his Apprentice: But I cannot take it, upon *this* Order, to be an Aſſignment of the Apprentice.

Mr. J. *Page* was under the ſame Doubt. Beſides, the Time not being out, if the Child comes back again after the Lending for a Year, and continues forty Days with the Maſter, I ſhould very much doubt whether this would not quite turn the Matter back again, and make a ſubſequent Settlement in the firſt Maſter's Pariſh.

Mr. J. *Probyn*. I apprehend that this Indenture could not be diſcharged by *parol*. If a Returning to the Maſter had appeared, it would have been gaining a new Settlement. But my preſent Thoughts are, that this is a good Settlement in St. *Mary le Bon*; whether you take it as a *Hiring and Service* for a Year, or whether you take it to be a *Service of the firſt Maſter*.

Here is a *Conſent of the Maſter and Apprentice:* And therefore it is a *good Hiring*. An Apprentice hiring himſelf *without* the Conſent of his Maſter is certainly not good.

My Lord objects, "that this is a Binding *by Aſſent of the Juſtices* "*of Peace:* And if the Juſtices have Power to take the Apprentice "back from *Hall*, then it is not a lawful Hiring of her to him for a "Year." But though the Juſtices may ſet aſide the Indentures upon *Complaint*, yet they cannot do it *ex officio:* And here *neither* Side can complain; becauſe there is a *mutual Conſent*.

Then taking it to be a Service of the firſt Maſter—It is not neceſſary that the Apprentice ſhould ſerve in the ſame Place where the Maſter lives. The * *Service* gives the Settlement, without any Regard to the *Place where the Maſter lives*. The caſe of the *Oxford Stage-Coachman* †, whoſe Hoſtler *ſerved at Chipping Wicomb*, was ſo determined.

* Or rather, the Settlement is gained by *Service* and *Inhabitancy*. See the Words of the Statute cited in the Margin of the following Page.

† 1 *Stra.* 528.

Now this is a good Service in the Pariſh where ſhe laſt ſerves forty Days; And therefore it is a good Settlement in St. *Mary le Bon*.

Mr.

ST. GEORGE HANOVER SQUARE *and* ST. JAMES WESTMINSTER.

Mr. J. *Lee.* I incline ſtrongly to think it a good Service in St. *Mary le Bon.* It is the *Service and Inhabitancy* which makes the Settlement.

In the Caſe of * *Caſtor* v. *Aicles*, the Aſſignment was holden to amount to a Contract between the two Maſters, though it was not conſidered as a ſtrict Aſſignment. It went upon the Service and Inhabitancy: And the poor Child was holden to be ſettled at *Aicles*, where the ſecond Maſter lived. The other Caſe of *Rex.* v. *Inhabitants of Buckington* went upon the Apprentice living at St. *Michael's Sebington without* the Conſent of the Maſter; though the Apprenticeſhip continued. But if it had been *with* his Maſter's Conſent, the Settlement would have been in St. *Michael's.*

Here it is ſtated, that the Apprenticeſhip was continuing: And the Conſent of the Maſter is moſt manifeſt.

If a Man lets his Apprentice do Buſineſs in another Pariſh, the Apprentice becoming a Pauper, muſt be ſent to the Place where laſt legally ſettled for forty Days. In this Caſe, ſhe could not be removed from St. *Mary le Bon:* For here was a Binding to her Maſter *Leiceſter*, and a *Conſent* of the Maſter; and ſhe lived there in a State of Inhabitancy, which was ſufficient to gain a Settlement, if continued for forty Days.

Lord *Hardwicke. This* is putting it upon a *new* Point. I think there is a great Doubt as to the *lawful Hiring.* But upon the *other* Point, it does ſeem indeed to be within the * 8th Section of the 3 & 4 of *W. & M. c.* 11. If the Apprentice, *by the Conſent* and *upon the Buſineſs* of the *Maſter*, reſides in a ſecond Pariſh, (and we muſt take this to be the Buſineſs of the Maſter, becauſe he conſented) ſhe is irremovable; and therefore gains a Settlement after forty Days of ſuch Reſidence. In the Caſe of an Apprentice, it is not neceſſary that the Binding and Inhabitation ſhould be in the ſame Pariſh.

The whole Court concurring, finally, in the ſame Opinion "that "the Pauper was legally ſettled in St. *Mary le Bon.*"—

The ORDERS *were* QUASHED.

* The Words of that Section are, "That if "any perſon "ſhall be "bound an "Apprentice "by Inden-"ture, and "inhabits in "any Town "or Pariſh, "ſuch Bind-"ing and In-"habitation "ſhall be ad-"judged a "good Set-"tlement."

V. Rex v. *Inhabitants of Eaſt Bridgeford*, Trin. 1739, 13 G. 2. B. R. *(Poſt.* No. 43.)
Rex v. *Inhabitants of St. Petrox*, P. 1745. 19. G. 2. B. R. *(Poſt.* No. 84.)
Rex v. *Inhabitants of Clapham*, P. 1747, 20 G. 2. B. R. *(Poſt.* No. 91.)
Rex v. *Inhabitants of St. Mary Kalendar in Wincheſter*, Tr. 1748, 21, 22 G. 2. B. R. *(Poſt.* No. 95.)
Rex v. *Inhabitants of Taviſtock*, Trin. 1767, 7 G. 3. B. R. *(Poſt.* No. 186.)
See alſo *Poſt.* No. 133. 142. 164. 174. 180. 193. 239. 250. 256.
N. B. Some of the above Caſes turn upon the *Aſſignment* of the Apprentice, others upon his *ſerving* another Maſter by Conſent without an Aſſignment, and others upon his *Diſcharge.* But in all of them it is conſidered, what amounts to ſuch a Service under an Indenture, as will be ſufficient to gain a Settlement.

Hilary

Hilary Term

8 Geo. 2. 1734.

Rex *v.* Inhabitants of Cirenceſter. No. 6.

An Order of *Diſcharge* is only final between the contending Pariſhes.

ON *Wedneſday* 13th *November* laſt, a Motion was made, by Mr. *Stevens*, to quaſh an Order of Seſſions diſcharging an Order of two Juſtices for the Removal of *S. C. &c.* from *Cirenceſter* to *Coln St. Aldwin's*.

N. B. The Paupers were, by this Order of two Juſtices, removed to the *ſame* Pariſh whereto they had been *formerly* removed, and ſuch former Order diſcharged. The firſt Order was made on the Complaint of the Pariſh of *Minety*: This latter, on the Complaint of the Pariſh of *Cirenceſter*. The Pariſh whither they were ſent, on both Complaints, was *Coln St. Aldwin's*.

The ſpecial Caſe ſtated in the Order of Seſſions is—That on the 12th of *October*, *&c.* the Paupers were removed, by an Order of two Juſtices, from *Minety* to *Coln St. Aldwin's*; which Order was *diſcharged* by the Seſſions on Appeal. And it appearing that the preſent Order is for the Removal of the ſame Perſons *to the* SAME *Pariſh* of *Coln St. Aldwin*; and that they have not gained any ſubſequent Settlement ſince the ſaid former Order; and the Court [of Seſſions] having heard Counſel on either Side touching the ſaid preſent Order; and it being inſiſted on, in Point of Law, on the Behalf of the ſaid Pariſh of *Coln St. Aldwin*, "that the ſaid preſent Order of Re-"moval *ought not* to have been made, the ſaid former Order having "been *diſcharged*; and that this Court [the Seſſions] *ought not to* "*enter into a Re-examination* of the Merits of the Caſe, or to hear "any Evidence touching the ſaid Settlement;" and this Court [the Seſſions] being of that Opinion, and that the ſaid preſent Order of Removal is *illegal* and ought not to have been made; do diſcharge the ſame accordingly.

The Objection to this Order of Seſſions was, That the Seſſions had erred, in ſuppoſing "that the Quaſhing of the firſt Order of Re-"moval by the Seſſions, was concluſive as to *all* OTHER Pariſhes, as

CIRENCESTER *and* COLN ST. ALDWIN'S.

"well as to the two Pariſhes concerned in it:" And for this Reaſon *viz.* that though one Pariſh has not ſufficient Evidence to fix the Pauper there, yet *another* Pariſh may. The Caſe of *Bedingham* and *Kingſton Bowſey* Pariſhes, in *Carthew* 516. was cited, in Point: And ſee 2 *Salk.* 486. S. C.

Mr. *Yates* ſhewed cauſe, on the laſt Day of the ſame *Michaelmas* Term, 1734.

Lord *Hardwicke* then ſaid, He took it to have been clearly ſettled, "that where the Seſſions upon an Appeal CONFIRM an Order of "Removal, and thereby determine a Man *to be ſettled* in a Pariſh, "ſuch Determination is concluſive as to *all other* Pariſhes, as well "as to the Parties concerned. But where the Order of two Juſtices "is DISCHARGED at the Seſſions, then it is *only* concluſive between "the two Pariſhes *concerned* in ſuch Appeal." "And if any *other* "Pariſh into which the Pauper ſhould have come, had *Evidence* "*more ſtrong than the former Pariſh had*, to charge the Pariſh whi-"ther he had been before removed by the diſcharged Order, they "were ſtill at Liberty to make uſe of it." And this is reaſonable: For a third Pariſh may be able to give better Evidence than had been given to the Seſſions by the former Pariſh. And why ſhould one Pariſh be precluded by the Inſufficiency of the Evidence given by another? It *may* be colluſive: It is, at leaſt, *Res inter* alios *acta*; and ſhould only bind the *contending* Parties.

Mr. J. *Page*. An Order *confirmed* binds all the World: But when *diſcharged*, it is binding only between the Parties concerned.

Mr. J. *Probyn* agreed to this Diſtinction: Becauſe the latter does *not* determine WHERE the Pauper *is* ſettled; but *only*, that he is NOT ſufficiently proved to be *ſettled* in the particular Pariſh to which the Juſtices had removed him.

Mr. J. *Lee*. I ſhould have been glad to have looked into this Caſe.

2 *Salk.* 486. *Salkeld* differs ſomewhat from *Carthew*, in reporting the Caſe of *Kingſton Bowſey*.

An Order *confirmed* is *final*, becauſe it determines the Place whither the Paupers are removed *to be* the Place of their Settlement. And it ſeems to me, that an Order diſcharged equally determines it *not* to be the Place of their Settlement; though it may be between *other* Parties, than thoſe who would now have it to be ſo.

Lord *Hardwicke*. It may ſtand over, if my Brother deſires it. But the former Litigation might be colluſive and fraudulent: Or the Pariſh firſt complaining might be ignorant of the moſt material Evidence to charge the appealing Pariſh.

It

It was accordingly then adjourned.

But now (on 28th *January* 1734,)

Lord *Hardwicke* declared they were *All* ſatisfied "that an Order of "REVERSAL is concluſive ONLY *on the Pariſhes concerned*; and *not* "on all other Pariſhes."

CIRENCESTER *and* COLN St. ALDWIN's.

Mr. J. *Lee*. I am ſatisfied from the Information of a Gentleman who was Counſel in the Caſe of *Kingſton Bowſey*, which is differently reported in *Salkeld* and in *Carthew*, "that the *true* Report of it is in *Carthew*;" and that an Order of *Diſcharge* is only final between the *two* CONTENDING *Pariſhes*.

Per Cur. unanimouſly—

The ORDER *of Seſſions* QUASHED.

The ORDER *of the two Juſtices* AFFIRMED.

V. Rex v. *Inhabitants of Bradenham*, *P.* 29. *G.* 2. B. R. *(Poſt.* No. 127.) accordingly.

and *Rex. v. Inhabitants of Bentley*, *P.* 30 G. 2. *B. R.* (*Poſt.* No, 135.) S. P. ſettled

Rex *v.* Inhabitants of New Windſor.

No. 7.

ON *Saturday* the firſt of *February* 1734, Mr. *Proctor* moved to quaſh an Order of Seſſions confirming an Order of two Juſtices, made for the Removal of *Diana Brooks* from *Chepping Wycomb* to *New Windſor*; together with the original Order.

Wedneſday 12 *Feb.* 1734. *Conditional* HIRING for a Year, with a proper *Service*, will gain a Settlement. *V. Seſſions Caſes*, Edit. 1750, Vol. 2. No. 163.

He made an Objection to the Order of the two Juſtices, That the Direction is to the Churchwardens and Overſeers of the *Burrough* of *Chepping Wycomb*, not naming any Pariſh; and that the two Juſtices, who made the Order of Removal, do not appear to be Juſtices for the Burrough or for the County.

He alſo objected to both the Orders, *upon the Merits*.

The Caſe ſtated upon the Order of Seſſions was—That in *Auguſt* 1731, ſhe was hired to ſerve Colonel *Meyrick* at *Thorpe* in the County of *Surry*, and was *to go into his Service a* MONTH *upon Liking*, and was to have 5 *l. a Year* Wages; but was to go away from her ſaid Service on a *Month's Wages* or a *Month's Warning*, to be at any Time paid or given on either Side by the ſaid Maſter or Servant; and that ſhe continued in her ſaid Service near the Space of two Years without any other Hiring, and received her Wages *quarterly*; and that at the Time of her being hired to ſerve the ſaid Colonel *Meyrick*, the ſaid Pariſh of *New Windſor* was the Place of her laſt legal Settlement; and that ſhe hath not ſince gained any other legal Settlement elſewhere or otherwiſe than by the ſaid Hiring and Service to the ſaid Colonel *Meyrick* as aforeſaid.

NEW WINDSOR *and* CHEPPING WYCOMB.

Upon ſhewing Cauſe (on the laſt Day of the ſame Term) againſt quaſhing the Orders, it was argued by Mr. *Pilſworth*, in Support of the Orders, That ſhe gained no Settlement at *Thorpe*; becauſe there was NO *Hiring for a Year*; nor was ſhe *compellable to ſerve a Year*. Even a Hiring for a Year with Liberty to go away upon forfeiting a Month's Wages, would not have been within 3 & 4 *W. & M.*: For the Servant ought to be compellable to remain a Year.

The Mention of 5*l. per Annum* cannot amount to a Hiring for a Year: It is only to *aſcertain the Proportion* of a Month's Wages after that Rate. And the contrary Intention appears from the receiving her Wages *quarterly*, and not yearly.

As to the objections to the *Form* of the original Orders—They come too late, ſince 5 *G.* 2. *c.* 19. 21. which impowers the Seſſions to amend and rectify them. Therefore having omitted to make their Objections before the Court of Seſſions, they have *waved* them.

The firſt of theſe Objections is, "That the Direction is to the "Churchwardens, *&c.* of the *Burrough*, without naming a Pa-"riſh."

But if a Vill in a Pariſh have particular Officers, it is ſufficient: And they ſhall be conſidered as diſtinct Pariſhes in Reſpect of their Poor. And the Burrough of *Chepping Wycomb* is a diſtinct Vill. And they have actually ſubmitted and removed the Parties.

The ſecond Objection is "That it does not appear that the Juſtices are Juſtices of the Burrough or of the County."

But "Burrough of *Chepping Wycomb*" is in the Margin. The Intent of the Words in the Margin of an Order are to denote the Extent of the Juriſdiction of the Perſons making it; (as *England* in a Lord Chief Juſtice's Warrant:) And they relate to every Part of it. And it appears upon the Order of Seſſions, that theſe two Juſtices are Juſtices of and for the ſaid Burrough. So that the Seſſions, who have Power to rectify any Omiſſions in Point of Form, *have ſupplied this*.

On the contrary, it was argued by Serjeant *Wright* and Mr. *Proctor*, the Counſel for *New Windſor*, That this is a *Hiring for a Year*, at *Thorpe*. "5*l.* a Year Wages" is tantamount to 5*l.* Wages *for a Year*. And ſhe was *compellable* to ſerve for a Year, unleſs by further Agreement the former Contract ſhould be diſpenſed with.

This is a point of great Conſequence: For *this* is the conſtant Way and Method of hiring among Gentlemen. In the Caſe between the Pariſhes of *Lidney* and *Stroude* in *Glouceſterſhire**, a Hiring for a Quarter of a Year, and if ſhe and her Maſter liked each other,

* *V. Ante*, No. 1.

other, ſhe was to continue a Year, and have 3 *l.* for her Year's Wages. She did continue a Year, and received the 3 *l.* Wages. This was held a good Settlement, on her having continued a Year. Yet that was not a direct and explicit Hiring for a Year. NEW WINDSOR *and* CHEPPING WYCOMB.

Though, in this preſent Caſe, the Pauper received her Wages *quarterly*; it was no Part of the Agreement "that ſhe ſhould do "ſo." Therefore that cannot vary the original Contract.

The Objections to the Order of theſe two Juſtices are not anſwered. There is no ſuch Thing as Churchwardens and Overſeers of a *Burrough:* They are *Parochial* Offices. And a Pariſh is an *Eccleſiaſtical* Diſtrict; a Burrough a *Civil* Diſtrict.

As to the Juſtices appearing to be Juſtices for the Burrough or County—2 *Salk.* 474. *Rex.* v. *Dobbyn*, proves it to be neceſſary that this ſhould appear. And in the Caſe of *Rex* v. *The Inhabitants of Oulton in Cumberland*, *P.* 13 *G.* 1. *B. R.* The Court held that the Juſtices muſt ſhew their Juriſdiction. And the Order of Seſſions can't ſupply this Defect. See the next Caſe.

As to the late Act of 5 *G.* 2. *c.* 19.—though the Seſſions had Juriſdiction to amend; yet ſince they *have not done it*, the Objection is open. The Juriſdiction of this Court remains, ſince the Act does not take it away.

Though the Words "Burrough of *Chepping Wycomb*," be in the Margin; there are no Words of Reference: Therefore the Order of Seſſions cannot help it; for, that is only Recital.

Lord *Hardwicke*.—The Queſtion upon the *Merits* of this Caſe, is, "Whether the Fact as ſtated, be *Evidence of a Hiring for a Year*." For, if it be, we muſt adjudge upon the ſame Evidence.

I think it *is*: Or elſe you would overturn moſt of the Settlements in *England*, upon Hirings in Gentlemen's Services. I believe the ordinary way of Hiring is at ſo much a Year, and a Month's Wages or a Month's Warning on either Side.

I think it is reaſonable that the "having 5 *l.* a Year Wages" ſhould be underſtood as meant to fix for how long a Time the Service was to be, unleſs ſooner determined. And I do not think the Limitation of its being to ceaſe upon a Month's Wages or Warning on either Side, will have any Effect: For that is the common Method. And it is expreſsly ſtated that ſhe continued in her ſaid Service near two Years: Her coming upon Liking for a Month, does not alter the Caſe, at all.

As to the Limitations of a Month's Wages or a Month's Warning—the Caſe of *Lidney* v. *Stroude* is a ſtrong Caſe: For that Service might have been determined at any Time.

Therefore

NEW WINDSOR *and* CHIPPING WYCOMB.

Therefore I think the Juſtices might have ſtated this to be a Hiring for a Year.

I do not think we can take the Seſſions to *have* amended the Order of the two Juſtices, only becauſe they had *Power* to amend it. But I think it is a Settlement at *Thorpe:* And therefore the Seſſions ſhould have diſcharged the firſt Order.

Mr. J. *Page.* I am of the ſame Opinion.—I think the "Having "5*l.* a Year Wages" ſhews that it was a Hiring *for a Year.* It is defeazible indeed: But ſo is an abſolute and expreſs Hiring for a Year, wherever there is a Power to determine it ſooner.

The other Objections againſt the original Order are out of the Caſe, becauſe the Merits are plain: And upon them it ought to have been diſcharged by the Seſſions.

Mr. J. *Probyn.* The natural Conſtruction is, that it is a Hiring for a Year at 5*l.* Wages: And it is tantamount to ſaying that ſhe was hired for a Year at 5*l.* a Year Wages.

The Reſt is Matter which is to go in Defeazance of the Contract. But notwithſtanding thoſe eventual Limitations, the Service actually ſubſiſts for near two Years: Though they might have avoided the Contract, they *have not.*

Mr. J. *Lee* was of the ſame Opinion, "that upon the Face of "this ſpecial Order, it appears that ſhe was legally ſettled at *Thorpe.*" For it is ſtated "that *ſhe was hired to Colonel* Meyrick *at* Thorpe." Now a *general* Hiring is a Hiring *for a Year.* Then it is ſtated "that ſhe was to have 5*l.* a Year Wages." The Contract depends upon the *firſt* Hiring. The Parties had it indeed in their *Power* to avoid the Contract: But they *have not* done ſo.

The Reaſon of making a Hiring for a Year requiſite, is the *Credit* of the Perſon thought worthy to ſerve for a Year. And here it is as ſtrong: For after Trial, the Maſter lets the Service go on for near two Years. Therefore the Words and Intention of the Act are complied with in this Caſe.

Per Cur. unanimouſly

BOTH ORDERS QUASHED.

(See the Caſes referred to at the End of No. 1.)

Eaſter

Eaſter Term

8 Geo. 2. 1735.

Rex *v.* Inhabitants of Stepney. No. 8.

Friday 25th *April* 1735. Order quaſhed, for an uncertain Reference to the County, in deſcribing the Juſtices. *V.* Caſes in *B. R.* 7, 8, 9, 10 *G.* 2. *Pa.* 156. S. C.

ON *Tueſday* 11th of *February* laſt, a Motion was made to quaſh an Order of Seſſions confirming an Order of two Juſtices made for the Removal of *A. B.* from *Cheſham* in *Bucks* to *Stepney* in *Middleſex*.

The firſt Exception was, That the Order of the two Juſtices is too *uncertain*, having *no County mentioned in the Margin*, and being directed to the Churchwardens and Overſeers of two Pariſhes in *two different Counties*, (*viz. Stepney* in *Middleſex*, and *Cheſham* in *Buckinghamſhire*:) And they only call themſelves Juſtices of the Peace for the *County aforeſaid*. So that they do not appear to have any Juriſdiction: For by 13, 14 *C.* 2. *c.* 12. the Juriſdiction is given to the Juſtices of the County where the Pauper comes to inhabit. And it is incumbent upon the Juſtices to *ſhew* "that they *have* Juriſdic-"tion." It ought to *appear upon the Face* of their Order "that "they *were* Juſtices for the County of *Bucks*." 2 *Salk.* 474. *Rex.* v. *Dobbyn*.

A ſecond Exception was, That the Order is all by way of *Recital*, and therefore has no Adjudication: For it affirms nothing. It only ſays.—"Whereas it appears to us, *&c*; and we do accordingly "adjudge:" So that it contains no poſitive Words; but is *all* mere *Recital*, without any Adjudication.

The Counſel, who ſhewed Cauſe againſt quaſhing the Orders, endeavoured to defend the Order of the two Juſtices againſt theſe Objections.

It runs thus: "Whereas Complaint hath been made by you the "Churchwardens and Overſeers of the Poor of the ſaid Pariſh of "*Cheſham* unto Us, whoſe Hands and Seals are hereunto ſet, two of "his Majeſty's Juſtices of the Peace, one of us of the *Quorum*, *for*

"*the*

STEPNEY *and* CHESHAM.

"*the County* AFORESAID, That, *&c:*" And then it goes on—"And *we do accordingly adjudge.*" This is a direct and positive Adjudication.

And as to the other Objection, It is a good Order enough, they said, unless the Court will *presume* it to be made by Justices of *Middlesex*. But the Complaint was made by a Parish in *Buckinghamshire*; the Paupers resided in *Buckinghamshire*; and the Examination was taken in *Buckinghamshire*. Therefore the Court will *not* presume that the Justices of *Middlesex* did all this; since the Nature of the Fact determines the contrary.

In a Case between the Parishes of *Horsham* and *Henfield*, *B. R. P. 5 G. 1.* The Order was expressed to be made "on Complaint "by *you*," in general, not saying *which* Parish complained. The Court held that the Complaint must be necessarily intended to be made by that Parish who were *aggrieved* by the Residence of the Paupers.

So here, it is sufficiently certain to a common Intent "that this "Removal must have been made by the Justices of *Bucks:*" And the rather, because the *Certiorari* is directed to the Justices of the County of *Bucks*.

Adjudication good, though coupled with a Recital.

Lord *Hardwicke*.—The Insertion of the Word "*And*," in this Order—("Whereas it appears to us, *&c*; *And* we do accordingly "adjudge") does, *in Strictness*, connect the Recital; and grammatically makes the whole Sentence to be Recital only. But *that alone* would not have very great Weight with me: It would be too hard to quash for *this*, since there are the Words "*We do adjudge.*" But it is quite uncertain, upon the other Exception, for *which* County they are Justices.

As to what has been urged in respect of the Court's presuming or intending them to be Justices of *Middlesex* in order to make it *bad*;—the answer is, "that the Court can *intend nothing at all* "about it." And it is not like the Case between *Horsham* and *Henfield:* For there the strict Sense of the Word *you*, was, "that "the Complaint was made by *all* of them;" and therefore it was in Substance well. I do not think therefore that this Exception has received or can receive an Answer.

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Mr. J. PROBYN.—We cannot support these Orders by Intendment: For, those who act under a Jurisdiction given by Act of Parliament must *shew* their Jurisdiction.

Mr. J. LEE was of the same Opinion.

Per Cur. unanimously.

The Rule must be made absolute to QUASH THE ORDERS.

Strange and Cunningham. *Vide Rep.* No. 12. p. 43. and the Authorities there cited, *in Margin.*

Rex *v.* Inhabitants of St. Peter's in Worcestershire.

No. 9. *Saturday* 3d *May* 1735. Evidence of the *reputed Father* admitted, to prove the BASTARDY of the *Children*, after the *Mother's* Death. V. *Sessions Cases*, Ed. 1750, Vol. 2. No. 180. *pa.* 298.

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Original Order—

" Whereas Complaint hath been made by Churchwardens, *&c.* " of St. *Peter's*, *&c.* That *Joseph Haigbington*, and *Joseph his Son* " *(being a Bastard)* have lately intruded themselves into your said " Parish of St. *Peter's*, there to inhabit as your Parishioners, con- " trary to the Laws relating to the Settlement of the Poor; and are " there likely to become chargeable, if not timely prevented; And " whereas upon due Examination and Inquiry made into the Pre- " misses, upon the Oath of the said *Joseph Haigbington*, it appears " unto us, and we accordingly adjudge, that the said *Joseph the* " *Son is likely* to become chargeable unto the said Parish of St. " *Peter's*; and that the last legal Place of Settlement of the said " *Joseph* the Son was in the said Parish of *Old Swinford* aforesaid, " in which Parish he was born on the Body of one *Hannah Aske* " (*being a Bastard*) at the House of *Ralph Boulton* in the Parish of " *Old Swinford*:

" These are therefore, *&c.*"

Old Swinford appeals to the Sessions.

The Sessions state this special Case.—And whereas upon the Examination of *Joseph Haigbington* upon Oath in this Court, the said *J. H.* gave in Evidence, " That for seven Years together, he tra- " velled with the said *Hannah Aske* as wandering Persons from Place " to Place, till the Time of the Death of the said *H. A.* which was " about fifteen Weeks since; and that during all that Time they

STEPNEY and CHESHAM.

"*the County* AFORESAID, That, *&c:*" And then it goes on—"And *we do accordingly adjudge.*" This is a direct and positive Adjudication.

And as to the other Objection, It is a good Order enough, they said, unless the Court will *presume* it to be made by Justices of *Middlesex*. But the Complaint was made by a Parish in *Buckinghamshire*; the Paupers resided in *Buckinghamshire*; and the Examination was taken in *Buckinghamshire*. Therefore the Court will *not* presume that the Justices of *Middlesex* did all this; since the Nature of the Fact determines the contrary.

In a Case between the Parishes of *Horsham* and *Henfield*, *B. R. P. 5 G. 1.* The Order was expressed to be made "on Complaint "by *you*," in general, not saying *which* Parish complained. The Court held that the Complaint must be necessarily intended to be made by that Parish who were *aggrieved* by the Residence of the Paupers.

So here, it is sufficiently certain to a common Intent "that this "Removal must have been made by the Justices of *Bucks:*" And the rather, because the *Certiorari* is directed to the Justices of the County of *Bucks*.

Adjudication good, though coupled with a Recital.

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"These are therefore, *&c.*"

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St. Peter's in Worcestershire and Old Swinford.

" cohabited and lay together as Man and Wife:" (and it did not appear that the Marriage was ever queſtioned in the *Life-time of the ſaid Hannah*) " That during the Time that he and the ſaid *H. A.* " did ſo cohabit as Man and Wife, the ſaid *Hannah* was delivered of " three Children: The ſaid *Joſeph*, one of them, who was the Per- " ſon removed by the ſaid Order, being of the Age of five Years or " thereabout, was *born* in the ſaid Houſe of *R. B.* of *S.* in the " Pariſh of *Old Swinford*. That the ſaid *Joſeph* and the other two " Children were *reputed as his Children*, and baptized as the legiti- " mate Children of him and the ſaid *Hannah*. That he and the " ſaid *Hannah Aſke* were *never married*." It appearing to this Court, upon the Evidence of the ſaid *Joſeph Haighington*, That the ſaid *Joſeph* the Infant was born during the Time that the ſaid *J. H.* and the ſaid *H. A.* did *cohabit and lie together and were reputed as Huſband and Wife*; and there being no other Evidence; this Court is of Opinion that the Evidence of the ſaid *J. H. can not ſupport* the Order, ſo as to *baſtardize* the ſaid *Joſeph* the Infant removed; the ſaid *J. H. having cohabited* with the ſaid *Hannah near ſeven Years* as Huſband and Wife. And therefore this Court [the Seſſions] doth order that the ſaid Order be vacated and ſet aſide, with ten Shillings Coſts. And the ſame is vacated, *&c.*

The Counſel, who now ſhewed Cauſe (on Behalf of the Pariſh of *Old Swinford*) againſt quaſhing the Order of Seſſions, ſaid, that the Order of the two Juſtices was abſurd; becauſe it called the Baſtard the Son *of J. H.*: Whereas a Baſtard is *nullius Filius*. But the Child did not appear to be a Baſtard. For even admitting the Validity of the Evidence, " That *Hannah Aſke* was never married " to *J. H.*" yet ſhe might be married to another Perſon. But this *Joſeph Haighington*, who gave the Evidence, could not be a *proper Witneſs* in the Caſe: For no-body can be adjudged a Baſtard without the Evidence of the Woman. The Order of the two Juſtices is a bad one: And the Seſſions have acted properly in diſcharging it.

LORD HARDWICKE.—Surely there is no Ground to ſupport the laſt Order (the Order of Seſſions). The firſt Order indeed goes a little too far in calling him a Baſtard, *the Son of J. H*; (becauſe, ſtrictly ſpeaking, a Baſtard is *nullius Filius*:) But that is *only an Impropriety*; and the Order is therefore well enough, for the Purpoſe of removing the Pauper to *Old Swinford*, where he was born.

As to the Order of Seſſions—It is an apparent Fact, that *Joſeph Haighington* himſelf was *never married* to her. And what is there to make

make him an incompetent Witneſs? It was an Objection to an Order of Baſtardy, two Terms ago*, "That it was founded upon the "Evidence of a married Woman, which ought not to be admitted "to *diſcharge her Huſband*." But † this Man does *not* ſwear to *diſcharge* himſelf: For whether he be the legitimate, or only the natural Father of the Child, he is equally bound to maintain it.

The ORDER *of* SESSIONS *was* QUASHED; and
The ORDER *of the* TWO JUSTICES AFFIRMED.

The Rule is entered in the following words:

"*Saturday* next after three Weeks from the Feaſt-day of *Eaſter*, "8 G. 2.

Worceſterſhire. *The King* againſt *The Inhabitants of the Pariſh of St. Peter's in the ſaid County.*

"IT is ordered, That the Order of Seſſions "made in this Cauſe for quaſhing the "original Order made in the ſame Cauſe for "removing one *Joſeph Aſke* from the Pariſh of "St. *Peter's* in the ſaid County of *Worceſter* "to the Pariſh of *Old Swinford* in the ſaid "County, be quaſhed for the Inſufficiency "thereof: And that the ſaid original Order "be affirmed.

"*On the Motion of Mr.* Wilbraham."

St. Peter's in Worceſterſhire and Old Swinford.

* *M.* 8 G. 2. *Rex* v. *Willey*, 31ſt *Oct.* 1734.

† *V.* Poſt. (No. 163.) *Rex* v. *Inhabitants of Stockland*, 30th *June* 1762.

Rex v. The Inhabitants of St. Maurice in Wincheſter.

No. 10. *Friday* 9th *May* 1735. A *Certificate* is avoided, and Settlement gained in the *certificated Pariſh*, by executing the Office of CONSTABLE for a City, which conſiſts of ſeveral *other* Pariſhes. *V.* 2 *Stra.* 1014. S. C. (very ſhort.) Alſo *Seſſions Caſes*, Ed. 1750, Vol. 1. No. 315.

TWO Juſtices having removed *Joſeph Talmage* from St. *Maurice's* to St. *Mary Calendar's* in *Wincheſter*; on Appeal, the Seſſions diſcharge this Order.

The Caſe appeared to be this:

William Weſt a Certificate-man of St. *Thomas's* came, about 1718, or 1719, by Certificate, into the Pariſh of St. *Mary Calendar* in *Wincheſter*. About 1721, he was choſen one of the *Conſtables* for the CITY of *Wincheſter* (which conſiſts of *ſeveral other Pariſhes beſides* the Pariſh of St. *Mary Calendar*,) and legally placed in that Office, and *executed, in and through* ALL PARTS *of the ſaid City*, the ſaid Office, for one whole Year: And during that whole Year, and as well for ſome Years before, as ever ſince, he conſtantly *reſided*

St. Maurice and St. Mary Calendar's in Winchester.

ſided and inhabited in the ſaid Pariſh of St. Mary Calendar. That, afterwards, he took *Joſeph Talmage* an Apprentice to him, by Indenture duly executed; who continued with him as ſuch for about four Years and a half. After which Time the ſaid *Joſeph Talmage* married, and intruded himſelf and his Wife into St. *Maurice's*; where he ſtaid for about three or four Months, till being likely to become chargeable to the ſaid Pariſh he was removed by an Order of two Juſtices to St. *Mary Calendar's*; who appealed to the Seſſions. The Seſſions, upon the Appeal, held "That *Joſeph Tal-*" *mage*, by Virtue of his being Apprentice to *William Weſt*, or "Reſidence with him as ſuch in St. *Mary Calendar's*, did *not* "gain any Settlement in that Pariſh: For that *William Weſt* "had *not*, by ſerving the Office of Conſtable for the ſaid City "previous to the Time of taking ſuch Apprentice, legally *avoided* "*or altered* the Settlement he was acknowledged by the *Certificate* "to have in St. *Thomas's*." And therefore the Seſſions quaſhed the Order of the two Juſtices.

On *Monday* 27th of *January* laſt, a Motion was made by Mr. *W. Eyre*, to quaſh the Order of Seſſions: For that *William Weſt*, the Maſter, had before he took this Apprentice AVOIDED *his Certificate*, by having executed this public annual Office *in* the Pariſh of St. *Mary Calendar*, being *legally placed* in the ſaid Office.

Conſequently, the Apprentice gained a Settlement in the ſame Pariſh; being quite out of the Statute of 12 *Ann. ſt.* 1. *c.* 18. *ſect.* 2. which excludes an Apprentice from gaining a Settlement by ſerving a Perſon who came into a Pariſh by Certificate, and had *not* afterwards gained a Settlement therein.

On ſhewing Cauſe (within the ſame Term) why the Order of Seſſions ſhould not be quaſhed, it was inſiſted, That the Act of 9 & 10 *W.* 3. *c.* 11. muſt be intended to mean a *parochial* Office, in which the Certificate-man is placed by the *Choice*, or at leaſt with the *Approbation* of the Pariſh. Whereas this is a *foreign* Appointment, and not the Act of the Pariſh; nor was it in their Power to remove him from it. Therefore the Caſe is not within this Statute.

The Counſel on the other Side compared it to ſome Caſes on 3 & 4 *W.* & *M. c.* 11. which ſays, "That if any Man ſhall for "himſelf and on his own Account execute any public *annual* Of-"fice or Charge in any Town or Pariſh, during one whole Year, "he ſhall be adjudged and deemed to have a legal Settlement there, "without Notice."

To

St. Matrice and St. Mary Calendar's in Winchester.

To which it was answered, by the Counsel who were for supporting the Order of Sessions, "That the present Case did not arise "upon 3 & 4 *W. & M. c.* 11. but on 9 & 10 *W.* 3. *c.* 11.

This Argument was on *Wednesday* 5th of *February*: And the Difficulty that then occurred to Lord *Hardwicke* was upon the Consequence of determining both these Acts in the *same* Manner. For, there is this Difference between them—Upon 3 & 4 *W. & M. c.* 11. the Question is, What shall amount to *Notice* to the Parish. And it enacts that one of these Equivalents shall be the executing any public annual Office in the Parish for a Year. But on the 9 & 10 *W.* 3. *c.* 11. not only the Parish had Notice before, by the Certificate; but, the *Notice amounts to nothing*; because the Parish cannot remove him, till he becomes actually chargeable.

So that there is a great Difference in Point of Consequence. In the one Case they may remove him, if he is likely to become chargeable: In the other Case they cannot; and yet when he shall have served his Year out, the Certificate is gone.

There was some Doubt too, Whether the Instances put in these Acts are upon the Foot of Notoriety *merely*, or whether they go upon the Idea of a Reward to the Person for his Service, and the Value and Credit of the Office he has served.

Mr. J. PROBYN and Mr. J. LEE inclined strongly to the latter Opinion; and thought that the Act should be construed liberally in Favour of Certificate-men.

The Court, upon the first Argument, took Time to consider it; and to look into the Cases.

Adjourned.

Now, upon the second Argument, the Counsel who argued in Support of the Order of Sessions (that is, on Behalf of the Parish of St. *Mary Calendar*,) observed, that it is now confined to a single Question, "Whether this be *such* an Office as will *avoid the Certi-* "*ficate*." If it is, then the Settlement is in St. *Mary's*.

The Case of *The Queen* v. *The Inhabitants of St. Mary Reading*, the Case of a Warden in Nature of a Tithing-man, H. 9 *Ann.* was upon 3 & 4 *W. & M. c.* 11. There are the Words, "in a *Town* "or Parish." And under *that* Act the Paupers were removeable *before* they became *actually* chargeable [V. *Cases of Settlements*, Ed. 1742, *pa.* 3. and *Lucas's Reports* (10 *Mod.*) 13, 14, 15.

The 8 & 9 *W.* 3. *c.* 30. compels the Parish to receive a Certificate-man: And therefore it ought to be considered upon the Foot of Estoppels.

See also *Foley*, 121. 19 *Viner*, 379. S. C.

St. Maurice and St. Mary Calendar's in Winchester.

Estoppels. The 9 & 10 *W.* 3. *c.* 11. is the Act upon which this Question arises: And the Person is not removable *till* he becomes *actually* chargeable.

The Case between the Parishes of * *Garsington* and *The Holy Trinity* in *Oxford* *H.* 2 *G.* 1. was determined upon another Point. A Certificate-man executed the Office of Tithing-man, for a Year; but was not sworn in till half the Year was out. An Exception was taken to the original Order for want of a Complaint of his being actually become chargeable: And upon that Exception it was quashed.

* V. *Cases of Settlements*, Ed. 1742, No. 95. and *Foley's Poor-Laws*, pa. 133. S. C.

This is not nor can be esteemed an Execution of an annual Office IN *his Parish*; nor had his Acts any Relation or Confinement to the Parish: He was a *City*-Officer, *not* a Parish-Officer.

The Counsel on the other Side (for quashing the Order of Sessions) observed, The Choice was by the whole City, as appears from the State of the Case: So that there was no Inconvenience or Surprize.

The Cases of constructive Notice are out of this Question: For the only Question here is, Whether the Certificate-man avoided his Certificate.

The Act of 3 & 4 *W.* & *M.* is enlarged by 9 & 10 *W.* 3. For the latter does not confine the Execution of the Office to be *upon his own Account*: Therefore an Execution as Deputy for another Person would be good upon *this* latter Act. And there are other Instances, beside those mentioned in the Act, that will gain a Settlement—As renting Lands in different Parishes. *M.* 9 *G.* 1. *Rex* v. *The Inhabitants of Broxbourn*. *Rex* v. *The Inhabitants of Melton*. The Court held it sufficient, though all the Lands were not within the Parish, according to the strict Letter of the Act. In *P.* 5 *G.* 1. between the Parishes of *East Woodhay* and *Burclear*, a Certificate-man married a Copyholder, and lived three Years; and by that Means gained a Settlement. [*Cases of Settlements*, Ed. 1742, No. 121.]

In the Case of *Garsington* v. *The Holy Trinity* in *Oxford*, the Tithing-man was legally chosen, and sworn-in in sufficient Time: Therefore the Court held it a good Settlement. But the Counsel for *Garsington*, the Merits being against them, objected to the original Order; and upon those Objections, it was quashed.

Mr. Justice LEE.—It is as you state it. My Account is, that the Case was upon this very Point: A Certificate-man was appointed a Tithing-man by the Steward of a Leet: And he served a Year; but was not sworn in till half the Year was expired. The Court inclined

that

St. Maurice and St. Mary Calendar's in Winchester.

that it was a good Settlement: But being a new Case and somewhat doubtful, they ordered a second Argument; and Lord *Parker* ordered the Counsel to speak to this Point, "Whether he was *legally* "*placed* in the Office, or not, as not having been sworn "till half "the Year was expired." The original Order was afterwards quashed for want of Complaint.

The Counsel for quashing the present Order of Sessions proceeded; and cited the Case of St. *John's Hertford* and *Amwell*: It was said that the Act never designed to put Certificate-men in a worse State than before. [V. *Cases of Settlements*, pa. 108, No. 143. S. C. *Trin.* 1722.]

It would be hard to confine this Clause to *parochial* Offices; because they could not be appointed Churchwardens or Overseers, without being Parishioners and substantial Inhabitants.

In the Case of *Garsington* v. *The Holy Trinity* in *Oxford*, Lord *Parker* said, "that these Statutes in Restraint of Settlements must "be taken *strictly*."

LORD HARDWICKE.—The State of this Case is, That a Man comes, *by Certificate*, from the Parish of St. *Thomas* to St. *Mary Calendar's* in *Winchester*; and is appointed a Constable *for the City* of *Winchester*.

The Question is, "Whether the Apprentice of this Man gained "a Settlement in St. *Mary's* by serving an Apprenticeship to him "there."

That Question immediately depends upon the Act of 12 *Ann. stat.* 1. *c.* 18. *sec.* 2. The Words of which are—"And not having after-"wards gained a legal Settlement in such Parish." Which brings it to this Question, "Whether the *Master* had by any Act DIS-"CHARGED *the Certificate* and *gained* a Settlement in the Parish "into which he came by Certificate." And that depends upon the Acts relating to Certificate-men.

The first of these is 8 & 9 *W.* 3. *c.* 30. which (in § 1.) enacts that a Certificate-person shall not be removed till he actually becomes chargeable: Though as soon as he does become so, he may be removed to the Parish from whence he brought the Certificate.

Yet still it was thought reasonable that there should be some Cases and Circumstances excepted; under which, he might gain a Settlement in the Parish to which he came with a Certificate. And therefore 9 & 10 *W.* 3. *c.* 11. was made, intituled, "An Act for explain-"ing an Act made in the last Session of Parliament, intituled, An "Act for supplying some Defects in the Laws for the Relief of the Poor;"

St. Maurice and St. Mary Calendar's in Winchester.

"Poor;" and reciting a Doubt, "By what Acts any Perſon coming "to reſide within any Pariſh by Virtue of a Certificate may procure "a legal Settlement in ſuch Pariſh; and whether ſuch Certificate "did not amount to a Notice in Writing, in order to gain a Settle-"ment." (And it would have been a ſtrange Thing if it had, when the Certificate was intended to prevent it;) It enacts that no Perſon or Perſons whatſoever, who ſhall come into any Pariſh by any ſuch Certificate, ſhall be adjudged, by any Act whatever, to have procured a legal Settlement in ſuch Pariſh, unleſs he or they ſhall really and *bonâ fide* take a Leaſe of a Tenement of the yearly Value of 10*l.* or ſhall *execute ſome annual Office in ſuch Pariſh*, being *legally placed* in ſuch Office.

The Queſtion then upon this Act is, Whether it means an annual Office *within* the Pariſh; or an annual Office *in general*, he being reſident in that Pariſh.

When this Caſe was ſpoken to before, I own I did think that it differed from the Caſes of poor Perſons at large; in whoſe Caſe, though they ſhould be appointed in a Town at large (which may conſiſt of ſeveral Pariſhes) the Appointment did not hinder the Removal: Whereas a Certificate-man could not be removed till he ſhould become *actually* chargeable: So that there ſeemed to be a Difference in Point of Conſequence to the Pariſhes. And therefore I thought that unleſs the Court was bound down by ſome Authority, it might deſerve Conſideration whether it ought not, in the Caſe of a Certificate-man, to be reſtrained to an Office *in* the Pariſh.

But the Caſe between the Pariſhes of *Garſington* and *The Holy Trinity* does now appear to be the Caſe of a Certificate-man; and the Office was an annual Office at large; and the Certificate-man was not appointed to it *by the Pariſhioners*, but at the *Leet*: And the Court's putting it upon the Legality of the Appointment, makes it ſufficiently clear that they did not doubt of the Office being *ſuch as would intitle him to a Settlement* within 9 & 10 *W.* 3. *provided he was legally placed in it.*

Then conſider the Caſes on 3 & 4 *W. & M. c.* 11. which will be too ſtrong for the Court to get over. The former Acts required Notice in Writing: But other Equivalents being thereby allowed, that Act ſays "that if any Perſon, who ſhall come to inhabit in "any Town or Pariſh, ſhall for himſelf and on his own Account "execute any public annual Office or Charge in the ſaid Town or "Pariſh during one whole Year, he ſhall be adjudged and deemed "to have a legal Settlement in the ſame, though no ſuch Notice

"in

" in Writing be delivered and publiſhed, as is thereby before re-
" quired."

St. Maurice and St. Mary Calendar's in Winchester.

Now here the Words are " *Annual Office or Charge in the ſaid* " *Town or Pariſh.*" But the Current of Authorities is, that thoſe Words were NOT confined to Offices *belonging to* the Pariſh, and to which the *Pariſh appointed.* And theſe Words in 9 & 10 *W.* 3. being the *ſame* as in that Act of 3 & 4 *W.* & *M.* the *Conſtruction* muſt therefore be the *ſame.*

It is ſaid indeed, that the former Act has the Word *Town,* (" in " the ſaid *Town* or Pariſh;") which Word " *Town*" is not inſerted in the latter Act. But I think that that Word makes no Difference at all: For it muſt mean ſuch a Town *in which a Settlement can be gained*; not a Town at large, conſiſting of a great many Pariſhes.

Therefore I am of opinion that the Maſter procured a legal Settlement in St. *Mary's:* And conſequently the Apprentice gained a good Settlement there alſo.

Mr. J. PAGE —The Caſe between the Pariſhes of *Garſington* and *The Holy Trinity* is in Point.

This Man was put in by the whole City. Therefore this Pariſh of St. *Mary,* which was a Part of the City, was intereſted, and had as good Notice as if he had been appointed by that particular Pariſh. And an Officer of a Hundred or of a City may be ſuppoſed to be a Man of better Subſtance and more conſiderable Figure, than an Officer of a ſingle Pariſh.

Therefore I concur with my Lord, in Opinion.

Mr. J. PROBYN.—This Act of 9 & 10 *W.* 3. does make Certificate-men capable of gaining a Settlement in the Pariſhes to which they come by Certificate. And how to diſtinguiſh this from the Reaſon of the Caſe of St. *Mary's Reading* would be difficult. There the Man executed his Office in every one of the Pariſhes: So did this Man. And here the whole City joining in the Choice, it ſhould ſeem to follow, that this Pariſh concurred in it. But if not, yet he muſt be ſettled in *ſome* of the Pariſhes within the City: And that muſt be in the Pariſh where he lived. All theſe Laws have been made in favour of Settlements in the Pariſh where the Party *inhabits.* And therefore where a Man rents a Farm lying in *two* Pariſhes, he is ſettled according to the *Inhabitancy,* not according to the Value.

Therefore he likewiſe concurred in the ſame Opinion, " that the " Pauper was ſettled in St. *Mary's.*"

St. Maurice and St. Mary Calendar's in Winchester.

Mr. J. Lee.—I think this a good Settlement in St. *Mary's*. These Acts have always been and ought to be taken favourably to the Persons endeavouring to gain Settlements: And it was so declared, in the Case of *Garsington* v. *The Holy Trinity*; and in the Case of *East Woodhay* v. *Burclear*, where the Certificate-man had married a Copyholder of Inheritance: And the Question was upon the Construction of this Act; which has stronger Words in *that* Particular, than in the present Case; because it is expresly declared that no Certificate-persons shall gain a Settlement by any other Act whatsoever except the *two* therein specified. And yet, though that Case was neither of the two, all the Court unanimously held "that a "Settlement was gained by the Certificate-man; and that this Act "was not to be considered as an explanatory Act, but as a * new "Law." And that is true: For it *enlarges* the Certificate-man's Power of gaining a Settlement. For, now, if he executes such an Office *by Deputy*, he gains a Settlement; Whereas by 3 & 4 *W.* & *M.* he was to execute it for himself, and on his *own* Account.

* V. *Lucas's Rep.* (10 *Mod.*) 430. and *Cases of Settlements*, Ed. 1742, pa. 91.

The Case of St. *Mary's Reading* turned upon the same Point as the present; though it was on the former Act of Parliament.

As to the Difference of the Word "*Town*" being omitted in 9 & 10 *W.* 3. tho' added in 3 & 4 *W.* & *M.* Lord *Hardwicke's* Answer is a very full one: It must mean such Towns wherein Settlements can be gained. And the Words of this Act are very strong: For it does not say *Parish*-Office, but "some Annual Office in such "Parish;" and therefore it is not to be restrained, in the Case of a *Certificate*-man, more than in any *other* Case.

So that, I think, both the Words of the Act and the Cases which have been determined upon it are very strong; and that the executing this annual Office, *though not appointed by the Parish*, gained this Certificate-man a Settlement.

Per Cur. unanimously—

The Order *of Sessions* quashed.

The Order *of the two Justices* confirmed:

V. (*Post.* No. 76.) *Rex* v. *Inhabitants of Wingham*, *M.* 1743. (*Post.* No. 81.) *Rex* v. *Inhabitants of Fittleworth*, *M.* 1744. (*Post.* No. 117.) *Rex* v. *Inhabitants of Whitchurch*, *T.* 1754.

Rex

Rex *v.* Inhabitants of Denham.

No 11.

Monday 12th *May* 1735. An *extra-parochial Place*, conſiſting of two Houſes and 300 Acres of Land only, does not come under the Notion of a Town or Village, within the 13, 14. *Car.* 2. *c.* 12. and no Settlement can be gained therein.

TWO Juſtices removed *Edmund Walker* and *Elizabeth* his Wife from *Dalham* to *Denham*: And the Seſſions, upon an Appeal, confirm the Order.

The Order of Seſſions ſtates the Caſe ſpecially. *Edmund Walker* hired a Houſe and Farm of 10*l.* a Year and upwards in *Denham*, and lived therein from the Year 1725 to the Year 1730, and was rated and paid to the Poor's Rates of the ſaid Pariſh: Afterwards, he hired another Houſe and Farm in *Southwold Park*, of 150*l.* a Year, and lived there for ſeveral Years. But *Southwold Park* aforeſaid is an EXTRA-PAROCHIAL Place, conſiſting of TWO *Houſes* and about 300 Acres of Land only, belonging to and in the Occupation of different Perſons, being in the whole of the Value of near 300*l.* a Year. And it *does not appear* that within the ſaid extra-parochial Place there *are or ever were any Perſons appointed to receive or provide for the Poor happening therein.* Upon deliberate hearing of Counſel on either Side, the Seſſions do, under the Circumſtances aforeſaid, confirm the Order ſo made for Removal as aforeſaid.

V. 2. *Str.* 1004. S. C. Alſo *Seſſions Caſes*, Ed. 1750, Vol. 2. pa. 250, No. 171. And *Caſes in B. R.* 7, 8, 9 and 10 *G.* 2. pa. 163. (all differently intitled.)

The Counſel who moved to quaſh theſe Orders (Mr. *Strange*) ſaid, It was now eſtabliſhed, "That a Perſon *may* be removed to an "*extra-parochial* Place, which may be looked upon as a Townſhip "or Vill, and has more Houſes than one;" and "that a *Manda-*"*mus* will lie, to appoint *Overſeers for an extra-parochial* Place." To prove which, he cited the Caſe of * *Dolting, Stoke Lane*, and *Brookham Lodge*, *H.* 11 *Ann.* and ‖ *Rex* v. *The Inhabitants of Ruſford*, *P.* 8 *G.*

* *V. Forteſcue's Reports* 219. 2 *Salk.* 486. in the Margin. And *Foley's Poor Laws*, pa. 108.

‖ *Str.* 512, and 8 *Mod.* 39.

Therefore the laſt legal Settlement of the Paupers was at *Southwold Park*; not at *Denham*.

On the contrary, It was argued (by Mr. *Abney* and Mr. *Filmer*) that the *general* Rule is, "that Perſons cannot be ſent to or from "extra-parochial Places." And there is no Inconvenience in this Doctrine: For as they are not to take *other's* Poor, ſo neither are others obliged to take *theirs*. Indeed if ſuch extra-parochial Place be ſo populous as to be looked upon as a Town or Vill, that may make a great Difference.

In the Caſe of the Inhabitants of *Dolting*, *Stoke Lane*, and *Brookham Lodge*, the Pauper *was* ſent to an extra-parochial Place, called *Brookham Lodge*: And the Order was quaſhed, becauſe the extra-

DENHAM *and* DALHAM.

parochial Place did *not* come under the Notion of a Townſhip or Village.

The Act of 13 & 14 *C.* 2. *c.* 12. * extends to *all England*, IF the extra-parochial Place *can* come under the notion of a Townſhip or Village; but NOT *otherwiſe*. A Place conſiſting only of ONE *Houſe* certainly does *not*. It ought, at leaſt, to conſiſt of *ſeveral* Houſes, to anſwer that Idea in any Degree.

* *V.* Sect. 21, 22.

In the Caſe of *Rex* v. *The Inhabitants of Belvoir*, *M.* 2 *G.* 2. *B. R.* there were *two* Houſes, the Duke of *Rutland's* (*Belvoir Caſtle*) and an Alehouſe: But there were not, nor ever had been, any Officers there. And the Order of Removal thither was quaſhed.

V. 1 Sir *J. S.* 512.

In the Caſe of *Rufford*, it appeared upon the Allegation in the *Mandamus*, and was admitted by the Return, "That it *was a Vill*," though inſiſted to be extra-parochial. And that Vill might conſiſt of 500 Houſes, poſſibly.

But *two* Houſes only, are not ſufficient to be conſidered as a Vill. And unleſs an extra-parochial Place be a Townſhip or Village it is not within 13 & 14 *C.* 2. *c.* 12. A Town or Village ſhould according to *Finch's* Law, contain ten Families. And by 1 *Mod.* 78. *Waldron's* Caſe, it appears that a Village is "a Diſtrict that has "a petty Conſtable over it." The Definition in *Co. Litt.* 115. is this—"*Villa eſt ex* pluribus *Manſionibus vicinata, et collata ex* plu-"ribus *Vicinis.*" This Place, therefore, having ONLY TWO Houſes in it, cannot be conſidered as a Townſhip or Village.

The Counſel for quaſhing the Orders (Mr. *Strange* and Mr. *Lloyd*) replied, That extra-parochial Places may have Officers appointed for them by *Mandamus*.

In the Caſe of *Dolting* and *Stoke Lane* it was holden, "That "there muſt be more Houſes *than* ONE." It has been ſaid, It was there holden "that there muſt be *ſeveral.*" But more than one *are* ſeveral.

This preſent Caſe anſwers the Definition in *Co. Litt:* It is a Vill conſiſting *ex* pluribus *Manſionibus & Vicinatis:* For it has *two* Houſes and 300 Acres of Land belonging to and in the Occupation of different Perſons.

If a Town be decayed, it is ſtill a Town. And to prove that this ſhall be intended and taken to be a Vill, they cited *Green* v. *Proude*, 1 *Mod.* 117. and *Addiſon* v. *Sir John Ottway*, 1 *Mod.* 251. If this be not a Vill, *what* is it? It muſt be *either* a Vill or *Part of another* Vill: (For *Pariſh* is only an *Eccleſiaſtical* Diviſion.) All

England

England is divided into *Vills:* And therefore this muſt be a Vill or Part of a Vill, or elſe no Part of *England.*

In the Caſe of *Belvoir*, there was a material Fault. For it was directed, "*To the* CHURCHWARDENS AND OVERSEERS of the Pariſh OR Liberty of *Belvoir:* Whereas it was particularly ſtated "that "there WERE NONE." Beſides, the Rule was made abſolute without any Defence made againſt it.

LORD HARDWICKE. — This is a *new* Caſe: At leaſt, it is ſo to me.

Before the Caſe of *Dolting* and *Stoke Lane*, it had been generally taken that there was NO *Power* lodged in the Juſtices of Peace to ſend Paupers to *extra-parochial* Places where there were no Overſeers of the Poor: But in *that* Caſe, all the Court held "that within 13 "& 14 *C.* 2. *c.* 12. the Court *might oblige* the Juſtices to appoint "Overſeers, where the Place was *ſuch* as might come under the "Notion of a *Village* or *Townſhip.*" Now that ‖ Clauſe was plainly *intended* for Townſhips in the *large northern Pariſhes only*; (and that appears by the *recital* Part of the Act:) But in the *enacting* Part, the Words "Towns, Hamlets and Vills" are mentioned *at large.* Whereupon the Court did there conſtrue the Equity of it to be, "that a Settlement *might* be gained in ſuch Pariſhes *at large*;" WITHOUT *confining it* to thoſe Pariſhes *only* which were *particularized* in the Recital. That alone was a *very liberal* Conſtruction of the Act: But they thought it within the *Miſchief* provided againſt by the Act, and reaſonable. And I believe my Lord Chief Juſtice *Parker's* Words were, "That a Settlement might be gained in an "extra-parochial Place *conſiſting of* MORE *Houſes than* ONE:" But then he went on—"So *as to come under the* NOTION *of a Town or* "*Village.*" The *Subſtance* of the Opinion reſted therefore upon this *Limitation* "of its *amounting to the Notion of a Townſhip or* "Village."

‖ Sect. 21.

Now *this* Place is called a *Park*, and deſcribed as *ſuch.* It is certainly very hard to define exactly WHAT is a *Townſhip* or a *Village:* It muſt be left to the Judgment of the Court, upon the Circumſtances of the Caſe ſtated.

By the 43 *Eliz. c.* 2. there muſt, in *every* Place, be MORE *Overſeers than* ONE. And when there are *only two* HOUSES in a Place, muſt the WHOLE *Pariſh* be *perpetual* Overſeers? And in ſuch a Caſe there is no Body over whom they are to have Juriſdiction, or any Body to chuſe them, excepting themſelves.

Now really *this* Place does *not* appear, to *my* Satisfaction, to be a Town or Village. In the Caſe of *Dolting* and *Stoke Lane*, the Order

DENHAM and DALHAM.

der was quashed because *Brookham Lodge* was holden by the Court *not* to be a Town or Village; notwithstanding that the *general* Law was there laid down as I have before mentioned. And here the Place does not, in my Opinion, come under the Notion of a Town or Village: And the Orders ought therefore to be affirmed.

Mr. J. PAGE held that a *single House, or* TWO *Houses, can not* amount to the Notion of a Town or Village. If the Place had *formerly* consisted of *more* than two; or had been a Town, and fallen to Decay; it ought to have been *so stated*. However, if the Houses were really and in Fact decayed and gone, it would then *cease* to be a Town or Village.

A Town or Village, in common Parlance, is an *aggregate Number* of Houses.

Therefore he concurred.

Mr. J. PROBYN was of the same Opinion.

The *least* Division known in the old Law is a *Tithing*; which consisted of *ten* Families. I should therefore think a *Vill* must consist of *at least* as much *as a Tithing*: It seems indeed to be something between a *Tithing* and a *Town*. Since there is no certain Definition of a Vill, why should we not fix it to the Number of a *Tithing, at least?*

The 13 & 14 *C.* 2. *c.* 12. was, I believe, intended for the *northern* Parishes: But it was at length construed to extend to ALL *others* in *England*, as coming under the same Equity and Reason.

The Limitation of the "more Houses than one," in the Case of *Dolting*, is—"*So as* to come under the *Notion* of a Township or "Village." Now if there are but two Housekeepers, are these two People to choose *themselves*, and to be *perpetual* Overseers? I think *two* Houses are not within the Rule, "*So as* to come under the *Notion* of a Township or Village."

Mr. J. LEE was of the same Opinion.

It is now thoroughly settled, "That the Justices *may appoint* "*Overseers in extra-parochial Places.*" But it is upon the Principle and Foundation, "that the extra-parochial Place comes under the "NOTION *of a Village or Town.*" I think the Notion of a Village, according to the *ancient* Law, is a Tithing consisting of ten Families: According to the *modern* Notion, it is a Place that has a Civil Officer called a *Constable*. I think that it ought, at the least, to have the *Reputation* of a Vill or Town. But this Place is not stated to have had the *Reputation* of a Vill or Town; but only "to con-

"sist

"ſix of two Houſes." Lord *Coke's* Definition of a *Vill*, "*ex plu-*
"*ribus Manſionibus vicinata*," muſt mean MORE *than* TWO Houſes. DENHAM *and* DALHAM.

If they had applied for a *Mandamus* to appoint Overſeers, the Queſtion would have come properly before the Court upon the * *Return*. But, upon the preſent Motion, it does *not appear* ſufficiently to the Court to be *ſuch* a Place as we can ſay *is* WITHIN *the Statute of* 13 & 14 *C.* 2. for the Paupers to be removed to as their laſt legal Settlement.

The Counſel for quaſhing the Order would have had this Caſe ſpoken to again. But

LORD HARDWICKE ſaid, He did not ſee how it was poſſible, upon *this* State of the Caſe, that the Court could take this Place to be a *Townſhip* or *Village*. He ſaid he was ſatisfied that the Juſtices have done right: And it falls exactly within the Reaſon of the Caſe of *Belvoir Caſtle*.

* This did happen afterwards; in *M.* 1740, 14 *G.* 2. B. R. *Rex* v. *Inhabitants of Welbeck*, 2 *Str.* 1143. and in *Tr.* 1763, 3 *G.* 3. B. R. *Rex* v. *Showler* and *Atter*. 3 *Bur.* Rep. 1391. See alſo, Poſt. No. 31. S. P. *with the principal Caſe.*

Per Cur. unanimouſly—

The RULE *was* DISCHARGED; And
BOTH ORDERS AFFIRMED.

Rex *v.* Inhabitants of Bourn.

No. 12. *Saturday* 17th *May* 1735. Order quaſhed, for want of an *Adjudication*, either *expreſsly* or by *Reference* to the *Complaint*, that the Pauper is likely to become chargeable to *the Pariſh complaining*. V. *Seſſions Caſes*, Ed. 1750, Vol. 2. pa. 299. S. C.

TWO Juſtices made an Order for the Removal of *Henry Burnham* and his Wife from *Spalding* to *Bourn*: And, upon an Appeal, the Seſſions confirmed it.

The Order of the two Juſtices had in its Margin the Words, "*Lincoln Holland.*"

It was directed to the Churchwardens and Overſeers of the Poor of the Pariſh of *Spalding* in the *Parts aforeſaid*, and to the Churchwardens and Overſeers *of the Pariſh* of *Bourn* in the County of *Lincoln*.

Whereas Complaint hath been made *by you* unto us, *&c*, being two of his Majeſty's Juſtices of the Peace (*Quorum unus*) for the Parts *Holland* aforeſaid, "That *H. B.* and his Wife have "lately intruded themſelves into your ſaid Pariſh of *Spalding*, "there to inhabit, *&c*, and are there become chargeable;" And whereas, upon due Examination and Inquiry made into the Premiſſes, and upon the Oath of *Henry Burnham* taken before us, it

BOURN *and* SPALDING.

it appears unto us, and we accordingly adjudge, that the ſaid *H. B.* and his Wife are become *chargeable*; and that his laſt legal Place of Settlement was in the Pariſh of *Bourn*, *by being* an Apprentice in that Pariſh to one *John Lambert* a Glover: Therefore we do adjudge *Bourn* aforeſaid to be the Place of their legal Settlement. Theſe are therefore, *&c.*

The Order of Seſſions recites this original Order of the two Juſtices; but, very *erroneouſly* recites that they had adjudged "that "they were *likely* to become chargeable *to the ſaid Pariſh of Spalding.*"

On *Saturday* 26th of *April*, a Motion was made to quaſh theſe Orders; and a Rule was granted to ſhew Cauſe: And on *Thurſday* the 8th of this Month it came on to be argued. Divers Exceptions were taken: Some, on the former Day; ſome, on the latter.

1ſt, There is no County either in the Body or Margin of this Order of the two Juſtices: It is only "*Lincoln Holland*," (not *Lincoln*ſhire.) Nor is the County at all named in the Body; nor has the Body any Reference to the Margin. In *Tr.* 8 *G.* 1. *Rex* v. *The Inhabitants of Sheringham*, an Exception was taken to an Order, "that the County was only in the Margin:" And it was holden to be a good Exception. So likewiſe in the Caſe of *Rex* v. *The Inhabitants of Underthwaite*, *H.* 9 *G.* 1. And in *M.* 11 *G.* 1. *Rex* v. *Auſtin*, the Caſe of *Rex* v. *Sheringham* was agreed to be good Law.

Exception to an Order, ſtating the Complaint to have been made by *You* to *Us*, overruled.

2d *Exception*.—The Complaint is ſaid to be made by *You* to Us. Now the Act confines the Removal to be upon a Complaint to be made *by the proper* OFFICERS *of the Pariſh* aggrieved: A Complaint *ex officio* coming from any other Perſon is nothing. 2 *Salk.* 492. *Foley's Poor Laws* 84. 5 *Mod.* 149. and *Comberbach* 354. The Caſe of *Marlborough* and *Weſton-Rivers*.

3d *Exception*.—It is not adjudged "That the Party is likely to "become chargeable *to the Pariſh complaining*;" but only "that "the Paupers are likely to become *chargeable*," generally. In *H.* 11 *G.* 1. between the Pariſhes of St. *Nicholas* in *Glouceſter* and St. *Peter's* in *Briſtol*, upon an Order for the Removal of *Mary White*, the reciting Part of it was, "Whereas the Pauper was likely to be-"come chargeable *to the Pariſh of A:*" But in the adjudicating Part, they only ſaid, "that ſhe was likely to *become chargeable*," without adding the other Words "*to the Pariſh of A.*" The Chief Juſtice held it bad for this Exception. And a Rule was made to ſhew Cauſe. [See *Seſſions Caſes*, Ed. 1750, Vol. 2. *pa.* 69, 70, S. C.]

4th *Exception*.

4th *Exception.*—The Settlement of this Man in *Bourn* is ſtated to have been acquired by his having *been* an "Apprentice to one *Lam-*"*bert* a Glover in that Pariſh:" and *therefore* they adjudged *Bourn* to be the laſt legal Place of his Settlement. Now the *mere* having been an Apprentice is not ſufficient to gain him a Settlement: They ought to have ſhewn that his Maſter was *not a certificate-man*, and that the Apprentice had *ſerved him forty Days there.*

5th *Exception.*—The Order is miſdirected; being "to the "Church-wardens and Overſeers *of the Pariſh* of *Bourn*;" not adding "*of the Poor.*" Now there is no ſuch Officer as Overſeer *of a Pariſh:* They are Overſeers *of the Poor* of the Pariſh.

6th *Exception.*—The Juſtices deſcribe themſelves as Juſtices of the Peace *&c*, *Quorum unus:* which is *Latin* and *not* a technical Term, (though *Quorum* alone, without the Addition of *unus*, is a technical Term.)

BOURN. *and* SPALDING.

Exceptions to an Order, for not ſhewing in particular *how* the Settlement was gained; on account of the Direction, being to the Church-wardens and Overſeers of a *Pariſh*, omitting *the Poor*; and that the Juſtices are deſcribed, with a *Quorum unus*; overruled.

The Counſel, who ſpoke in Defence of the Orders, anſwered,

1ſt, The Commiſſioners of the Peace in *Lincolnſhire* are diſtinct Commiſſioners for the *three Diviſions* of that County, which are *Holland*, *Keſteven*, and *Lindſey:* And the conſtant Manner of marking theſe different Diſtricts in the Margin of Orders is not by the County ("*Lincolnſhire.*") but by the Diviſion, as this is, "*Lincoln Holland*," "*Lincoln Keſteven*," "*Lincoln Lindſey.*" And the Court will take Notice of theſe Diviſions of this County.

In Orders of Removal, the Reference made to the Margin in the Body of the Order is ſufficient. To prove this, they cited the ſame Caſe of *Rex* v. *Sheringham*, which had been cited againſt them. For here it *is* ſo referred, in theſe Words, "the Pariſh of *Spalding* "*in the Parts aforeſaid.*"

2dly, The Word "*you*," in this Order, muſt mean the Perſons to whom it is directed: And they are the *Churchwardens and Overſeers* of the Pariſh aggrieved.

3dly, The Complaint recited is, "that they were likely to become "chargeable to *Spalding:*" And then the Juſtices (after having heard this Complaint, and examined into it upon Oath) adjudged them "likely to *become chargeable*," in general. The Reference to the before recited Complaint renders it certain *where* they are likely to become ſo. *H.* 5 *G.* 1. between the Inhabitants of *Barholm* and *Witham* in *Lincolnſhire.*—This ſame Exception was taken and overruled. The Complaint was right. And the Adjudication was, "It "appears to us, and we *accordingly* adjudge, That the ſaid *J. S.* is "likely to become chargeable," but did not ſay to *what* Pariſh. The

BOURN and SPALDING.

Court said they would take it *according to the subject Matter*; and held that the Word "accordingly" referred the Adjudication to the Complaint, which did set forth "that he was likely to become "chargeable to that particular Parish."

4thly, The Apprenticeship is only mentioned to shew the *Nature* of the Settlement which he gained in *Bourn*. It was not necessary to shew, exactly and circumstantially, *how* he gained it. *M.* 11 *Ann. Rex.* v. *The Inhabitants of Crowland.*—The Pauper was adjudged to be last legally settled in *St. John Baptist's*, having served there one whole Year with one *J. D.* It was objected, "that it did not ap-"pear upon the Face of the Order, that he was *hired* for a Year." But the Court held that it was not necessary: for it shall be presumed. So here, As the Justices have adjudged that he gained a Settlement in *R.* by having been an Apprentice there, it shall be presumed that he served forty Days to a proper Master. [And they might have added the Case of *The King* v. *The Inhabitants of St. Mary Calendar's Winchester*, *M.* 5 *G.* 1. in Point. An Order of Removal was holden good, though it was not said, "that the Apprentice had "served forty Days, *&c*;" but only "that his last legal Settlement "was in *M.* he having served as an Apprentice there."]

5thly, The Overseers of the Poor of the Parish are Overseers of the Parish. But the Churchwardens are also mentioned in the Direction, (which is "to the Churchwardens and Overseers of the Parish of "*Spalding* in the Parts aforesaid.") And surely this Description is sufficient when joined with the Word Churchwardens, who are themselves Overseers of the Poor of their Parish.

6thly, *Quorum unus* is a technical Term, as much as *Quorum* alone.

The Court were of Opinion that none of these Exceptions were of any Weight, and were sufficiently answered, except the Third: Upon which they had some Doubt; and therefore took Time to consider it and look into the Cases, to see if that Point had been already determined.

LORD HARDWICKE now delivered the Opinion of the Court.

The Exceptions which have been taken are of no material Weight, except the third.

The Court will take notice of the Divisions of a County.

As to the first—We must take the Words in the Margin (*Lincoln Holland*) to mean that *Lincoln* is the *County* of *Lincoln*, and *Holland* the *Division*: And the Court will take Notice of the Divisions of this County.

County. And the Body of the Order refers to the Parts aforeſaid, and (in another Place) to the Parts of *Holland*. And the Reference to the Margin is ſufficient in *Orders of Juſtices*. In the Caſe of *Rex* v. *Foſſet*, *P.* 12 *W.* 3. *B. R.* the Court held that in Order of Juſtices, the County being in the Margin only, and the Place where, *not* being ſaid to be *in the County aforeſaid*, it would be ill for Want of ſuch Reference: But the Opinion of the Court, in that Caſe, takes it for granted that an Order would be good *with* ſuch a Reference to the Margin. I take it to be always ſo in *Orders*; and can find no Caſe to the contrary.

BOURN *and* SPALDING. Reference to the Margin (if plain and clear) is ſufficient in *Orders of Juſtices*. *Poſt.* No. 45. 69. 204. *Aliter* if the Reference be *uncertain*. *Ante* No. 8. *Poſt.* No. 58. Or in an *Indictment*. *Poſt.* No. 204.

The Caſe of *Rex* v. *Auſtin*, *M.* 1724, does not warrant the Exception. That was an Order for ſuppreſſing an Ale-houſe. The County was *only* in the Margin, but is neither repeated *nor referred to* in the *Body* of the Order: Therefore that was certainly ill. The Caſe of *Rex* v. *The Inhabitants of Underthwaite* ſeems to be the ſame: Therefore that was alſo ill.

But there is no Authority where there has been a Reference to the Margin, and it has notwithſtanding ſuch Reference been holden ill. I believe the Apprehenſion that it would be ill, though there were ſuch a Reference, has been grounded merely upon a Confuſion ariſing from an imperfect taking of Caſes where there was in Fact no Reference at all to the Margin. We all hold that it is well enough where there *is* ſuch Reference.

But we think there is more Weight in the third Exception; *viz.* "That there is no ſufficient Averment that the Pauper was likely "to become chargeable *to the Pariſh of Spalding*, nor any Reference "at all to the Complaint."

We hold that there muſt be *either* an expreſs Adjudication, or a *plain* Reference; becauſe it is the very Point upon which the Juriſdiction of the two Juſtices is founded and ſubſtantiated. Here the Complaint is very well: But the *Adjudication* is at *large*, there being no Words of Reference. It is only "that they are likely to be-"come *chargeable*." Now, this may be to their Relations or Parents, as well as to the *Pariſh of Spalding*: It has no particular Reference to the *Pariſh of Spalding*.

The Caſe between the Pariſhes of St. *Nicholas* in *Glouceſter* and St. *Peter* in *Briſtol* is ſimilar to the preſent: "It appears to Us, and we "do accordingly adjudge:" And yet, notwithſtanding the Word "accordingly," the Order was * quaſhed. The Caſe of *The King* againſt *The Inhabitants of Witham*, *H.* 5 *G.* 1. was not finally determined

* V. *Seſſions Caſes*, Ed. 1750, Vol. 2. No. 73.

BOURN and SPALDING.

termined by the Court, but was referred to the Judge of Aſſize. [And ſo it appears by the Rule-Book *Die Jovis prox' poſt Octab' pur' beatæ* Mariæ *Virginis*, Anno *quinto* Georgij *Regis*, *Rex* v. *Inhabitan' de Wytham ſuper Montem.*]

Vide Poſt. No. 45, 46. S. P.

There is no Caſe that I can meet with, upon the ſtricteſt Inquiry, where an Adjudication at large, without *ſome* Word of Reference to the Complaint, has been holden good.

BOTH ORDERS QUASHED.

Trinity Term

8 & 9 Geo. 2. 1735.

No. 13.

Rex *v.* Inhabitants of Sandwich.

Thurſday 12th *June* 1735.

TWO Juſtices removed *Mary Paine* and her ſix Children from *Studland* to *Sandwich*: And upon an Appeal, the Seſſions † confirmed their Order.

Two *diſtinct* Tenements taken at *different* Times, and lying in *ſeveral* Pariſhes, make a Settlement, where the Pauper lives. V. *Seſſions Caſes*, Ed. 1750, Vol. 2. pa. 245. No. 166. S. C.

On *Monday* 19th of laſt *May* a Motion was made by Mr. *Bingham* and Mr. *Gundry*, to quaſh theſe Orders.

The Caſe ſtated by the Order of Seſſions was, That *John Paine* deceaſed, the Huſband of the Woman and Father of the Children, was born at *Corfe Caſtle*; and after he came of Age, he rented a Tenement of 15 *l.* a Year in *Sandwich* for a Year and upwards: And when his Leaſe and Time for which he took the ſaid Tenement were expired, he left the ſame and went into the Pariſh of *Studland*, and took and rented a Houſe within the ſaid Pariſh of *Studland* at the yearly Rent of 30 *s.* And *after* he had lived in the ſaid Houſe about two Years, he took and rented a Tenement or Lands in *Langton* of the yearly Value of 12 *l.* on which there was

no

no Houſe, and occupied it two Years; and *inhabited in* and rented *alſo*, during all the Time, the ſaid *Houſe in Studland*. And the Seſſions declare that the laſt Settlement of the Wife and Children depends upon the Settlement of the Huſband, upon the Facts above ſtated in their Order.

In Support of the Motion, the Caſe between the Pariſhes of *North Nibley* and *Wotton Under Edge*, *M.* 1 *G.* 1. was cited; where it was determined "that two Tenements (though rented of different "Perſons) made a Settlement in the Pariſh where the Pauper lived." [V. *Foley's Poor Laws*, *pa.* 90.] They alſo cited the Caſe of *South Sidenham* v. *Lamerton*, 3 *G.* 1. where it was holden "that one entire "Tenement of the Value of 10*l.* a Year gains a Settlement in the "Pariſh where the Houſe ſtands, though Part of the Lands lie in "another Pariſh." [See *Foleys Poor Laws*, *pa.* 93. and *Seſſions Caſes*, Ed. 1750, Vol. 1. pa. 122. *Lucas* 388. and 1 Sir *John Strange* 57.]

They likewiſe cited the Caſe of *Rex* v. *The Inhabitants of Hollibourne*, *M.* 1729, 3 *G.* 2. where the Pauper rented a Houſe and Lands of 12*l.* 10*s.* *per Annum* Value; whereof the Houſe and Land to the Value of 9*l.* 10*s.* *per Annum* lay in one Pariſh, and 3*l.* a Year of the Lands lay in another: And the Settlement was adjudged to be in *Elſted*, where the Houſe was. [V. *Seſſions Caſes*, Ed. 1750, Vol. 2. pa. 159.] So in *M.* 10 *Ann. Regina* v. *The Inhabitants of Sedgeborough*, the Pauper inhabited a Cottage in one Pariſh, and Land of 11*l.* a Year in another: And it was holden that he gained a Settlement in *Sedgeborough*, where he inhabited the Cottage.

On the other Side, in Support of the Orders, Mr. *Huſſey* (afterwards Serjeant *H.*) admitted that in the Caſe of *Humbleton* and *Sedgeborough* it was reſolved to be *no* Settlement in the Pariſh where the Lands of 11*l.* *per Annum* lay; but doubted whether it went ſo far as to determine it to be *a* Settlement in the other Pariſh where the Cottage was. [See *Caſes of Settlement*, pa. 5. No. 8. and *Seſſions Caſes*, Ed. 1750, Vol. 1. pa. 36. No. 38. and pa. 82. No. 75. S. C.]

In the Caſe of *South Sidenham* and *Lamerton*, the Court made a Diſtinction between two *different* Contracts, and *one entire* Contract: And they held that taking two diſtinct Tenements in two different Pariſhes would not gain a Settlement in either, though both together ſhould be of the Value of 10*l.* *per Annum*.

That

SANDWICH *and* STUDLAND.

That was one *entire Contract*, and a Leaſe of *one entire Tenement* lying in different Pariſhes: And it was upon *that* Ground that it was holden to gain a Settlement.

But *here* they are *two different Contracts*, and two *diſtinct Tenements*.

The Counſel for *Sandwich* (who had moved to quaſh the Orders) replied—That the Reaſon of a Settlement's being gained by renting 10*l.* a Year in Value, turns upon the *Ability* of the Perſon to rent Lands of ſuch a *Value*, and his being of *Credit* enough to be intruſted with it.

LORD HARDWICKE.—I took it that this Matter had been very fully ſettled, "that whether the Taking was *diſtinct* or *entire*, or in *one* Pariſh or in *two*, it is the *ſame Thing*." Indeed the *Words* of the Act are—"*coming to ſettle* as aforeſaid *in any Tenement* under "the yearly Value of ten Pounds."

But the *Intention* of the Act is, that if a Perſon be of ſufficient *Ability* to occupy a Farm or Tenement of the Value of 10*l.* a Year, it ſhall *exclude the Preſumption* of his being likely to be chargeable to the Pariſh. And *this* is the Ground of theſe Reſolutions. And the Court always *encourage* Settlements in Pariſhes where the Pauper has ſpent his Labour.

Therefore I think theſe Orders are ill.

Mr. J. PAGE concurred.—A man is not a better Man for renting *one* 10*l. per Annum* than *two fives:* And he contributes to the Poor, for the whole Ten, ſomewhere or other. From the Nature of the Thing and the Reaſon of the Caſes, a Man that is able to rent and does rent 10*l.* a Year ſhall be ſettled in the Pariſh where he lives.

Mr. J. PROBYN.—I remember it has been made a Queſtion "whether two *diſtinct* Tenements taken at *different* Times, when "neither of them alone amounted to 10*l.* a Year in Value, ſhould "make a Settlement." But it has been ſettled ſince "that it "does."

However, here the ſecond Taking is a Taking of an *entire Tenement* of *above* 10*l.* a Year, on an *entire Contract* with *one* Perſon. And it has been long eſtabliſhed, "that where a Perſon *living* in "one Pariſh rents an *entire* Tenement of above 10*l.* a Year in that "or in any other Pariſh, it gains him a Settlement in the Pariſh "where he lives."

Mr. J. LEE.—I think my Brother *Probyn* has fully anſwered the Objection as to the *Entierty* of the Tenements. So that this Objection

Objection may be laid out of the Caſe. And then the *Reaſon* of the Caſes upon this Head has conſtantly gone upon the *Sufficiency of a Perſon able* to rent a Tenement of ſuch a *Value*. The Act of Parliament has not fixed it to be a Tenement in the *ſame* Pariſh. And the Man's *Ability* is the ſame, whether the Contract be with *one* Perſon or with *more*. This I take to be the conſtant Determination upon Caſes of this Sort. However, as the laſt Taking was of an *entire* Tenement of *above* the Value of 10 *l.* a Year, it ſtands free from the Objection raiſed by the Counſel who argued for the Orders, "that "this is *not* an entire Contract."

SANDWICH *and* STUDLAND.

Vide Poſt. No. 63. 190. S. P.

Per Cur.

BOTH ORDERS QUASHED.

Rex *v.* Inhabitants of Eaton.

No. 14. *Saturday* 14th *June* 1735.

Abſence of the Servant, without Conſent, is *purged* by the Maſter's receiving him again.

TWO Juſtices removed *William Drackett* and *Ann* his Wife from *North Wheatley* in *Nottinghamſhire* to *Eaton* in the ſame County: And upon Appeal to the Seſſions, they confirmed the Order of the two Juſtices.

The Caſe was ſpecially ſtated in the Order of Seſſions thus:—— That about ſeven Years ago, the ſaid *William Drackett* was hired as a Servant, to one *William Cocking* a ſettled Inhabitant in *Eaton*, for a Year, from *Martinmas* to *Martinmas*; and that, about the *Middle* of the Term, he *abſented himſelf* from his Maſter's Service, *without his Conſent*, for about *three Weeks together*; and then, upon the *Demand of his ſaid Maſter*, he returned, and ſerved out the Remainder of the Year with his ſaid Maſter at *Eaton*. The Seſſions being of Opinion that this Service gained a Settlement, therefore confirmed the original Order.

The Counſel who moved to quaſh theſe Orders (Mr. *Makepeace*) objected that this was *not a* SERVICE *for a Year*, purſuant to the Statute of 8 & 9 *W.* 3. *c.* 30. *ſect.* 4. which makes "a *Continuance* "*and Abiding* in the ſame Service during the Space of one *whole* Year," to be as neceſſary as a Hiring for a Year. For, it is ſtated in the Order of Seſſions, "that he *abſented* himſelf for about *three Weeks* of that Time "without the Conſent of his Maſter:" And he did this without ſerving ſo much Time beyond the Expiration of the Year as to make the whole Time up a complete Year. He could not therefore under *ſuch*

EATON and NORTH WHEATLEY.

ſuch a Service gain a Settlement: And, conſequently, the Orders are bad and ought to be quaſhed.

In Support of the Orders, it was anſwered (by Mr. *Abney*) That this Exception was over-ruled in the Caſe of *The King* againſt *The Inhabitants of Iſlip*, *P.* 7 *G.* 1. where one *Wilſon* (whoſe Settlement was then in Diſpute) abſented himſelf from his Service *four* Days, without his Maſter's Conſent; afterwards, he went to ſee his Friends for *three* Days more (but that was with the Conſent of his Maſter;) and about *three* Days before the End of the Year, he went away to ſeek a new Service; all which amounted to ten Days Abſence. And when he and his Maſter came to ſettle Accounts, the Maſter deducted out of his Wages a proportionable Sum of Money to the ten Day's Abſence; which was a Circumſtance that made that Caſe much ſtronger than this: And yet the Court held the Service in that Caſe to be a Service *within* the Meaning of 8 & 9 *W.* 3. And that the Party thereby gained a legal Settlement in *Iſlip*. [See this Caſe very well reported in Sir *John Strange's Reports*, Vol. 1. pa. 423.]

Per Cur.—This is a very good Order; the Abſence of the Servant for the three Weeks being *purged* by the Maſter's *receiving him again*; which ought to be conſidered in this Caſe as a *Diſpenſation:* And in Strictneſs of Law, he ſtill continued in the Service of the Maſter, notwithſtanding ſuch Abſence. And beſides, if we were to be over-nice in Services upon this Statute, it would be attended with very great Inconveniences: For, a Servant would not be able to go for two or three Days to ſee his Friends without running the Riſque of forfeiting his Settlement; which would be too hard.

The ORDERS *were therefore* AFFIRMED.

V. Poſt. No. 108. *Rex* v. *Inhabitants of Ozleworth*, P. 1751. *Poſt.* No. 115. *Rex* v. *Inhabitants of Hanbury*, Trin. 1753; and *Poſt.* No. 158. *Rex* v. *Inhabitants of Chriſtchurch*, P. 1760.

Rex

Rex v. Inhabitants of Barton Turfe.

No. 15.

Monday 23d *June* 1735.

After the *Father's* Death, a *Child* follows the Settlement of its *Mother*; though above *ſeven* Years old.

V. Seſſions Caſes, Ed. 1750, Vol. 1. pa. 399. No. 317. S. C.

TWO Juſtices removed *Deborah Man* from *Happiſburgh* to *Barton Turfe*: And upon Appeal, the Seſſions confirmed that Order.

The Caſe ſpecially ſtated on the Order of Seſſions was this—*Thomas Man*, who married *Deborah* the Daughter of *Francis Browne*, having *then Deborah* (the Perſon removed) his Daughter, of the Age of *ten* Years or thereabout, hired a Farm of the yearly Value of 100*l.* in *Barton Turfe*; which he occupied for about three Years; and died there; and was Overſeer of the ſaid Pariſh. After his Death, *Deborah* his Widow removed from *Barton Turfe* to *Happiſburgh*, and dwelt there in a Houſe and occupied Lands thereto belonging, of the yearly Value of 4*l.* which Houſe and Lands were given to her by the Will of *Francis Browne* her Father: And *Deborah* her Daughter, being then of the Age of thirteen Years, went and lived there with her Mother as Part of her Family (there being then ſeveral other Sons and Children,) for about the Space of one Year and a half. The Seſſions, upon due Conſideration had of the Premiſſes, adjudged that the ſaid *Deborah* the Daughter did gain a legal Settlement in *Barton Turfe*, in Right of the ſaid *Thomas Man* her Father who was legally ſettled there; and, *having once gained a legal Settlement in Barton Turfe*, could *not* afterward gain a *ſubſequent legal Settlement* in *Happiſburgh*, in Right of the ſaid *Deborah Man* her *Mother*, who had a legal Settlement there by dwelling in a Houſe and occupying Lands of which the Inheritance was veſted in her as aforeſaid, *by her going and living there with her ſaid Mother as a Part of her Family* in Manner aforeſaid: And therefore they confirmed the Order of the two Juſtices.

On *Wedneſday* 14th of *May*, in laſt Term, a Motion was made by Mr. *Preſton* to quaſh theſe Orders; and a Rule to ſhew Cauſe was then granted.

On the ſecond Day of this Term, Mr. *Preſton*, in Support of the Motion, cited the Caſe between the Pariſh of St. *George Southwark* and St. *Catharine's* near the *Tower*, *Mich.* 1 *G.* 1. which was upon an Appeal from an Order of two Juſtices for removing *Lydia Cloyd*, *Elizabeth*, *Anne*, *Catharine*, *James* and *Samuel Cloyd*, from St. *George's Southwark* to St. *Catharine's*; and the Seſſions confirmed it. The Order of Seſſions ſtated the Caſe, That the ſaid *L. C.* aged ſix-

BARTON TURPE *and* HAPPIS-BURGH.

teen Years, *E. C.* aged fourteen Years, *A. C.* aged ten Years, *C. C.* aged eight Years, *J. C.* aged four Years, and *S. C.* aged three Years, were the Sons and Daughters of *John Cloyd* and *Lydia Cloyd*; which ſaid *John Cloyd* the Father, at the Time of his Death, was legally ſettled in the ſaid Pariſh of St. *Catharine*, and there died; and that none of the ſaid Children have by any Act of their *own* gained any Settlement different from the Settlement of their Father: But that *after his Death*, the ſaid *Lydia Cloyd* his Widow and her ſaid ſix Children went to dwell at the ſaid Pariſh of St. *George Southwark*, where *ſhe took a Houſe of* 12*l. a Year*, and lived in the ſame above four Months, and paid the Queen's Tax, but never paid any Rent to her Landlord. The Seſſions were of Opinion " that the ſaid ſix " Children, not having gained any legal Settlement themſelves, are " ſettled at the ſaid Pariſh of St. *Catharine*, where their *Father John* " *Cloyd* had his laſt legal Settlement, and gained *no* Settlement by " their living in the ſaid Houſe with their *Mother*:" Therefore they diſmiſſed the Appeal, and confirmed the Order of the two Juſtices. But *this* Court were of Opinion, " that the Children gained a Set- " tlement in St. *George's Southwark*, their *Mother's* Pariſh." And, in the ſame Term, both Orders were quaſhed. [See this Caſe cited in 2 L. *Raym.* 1474. *Forteſcue* 218. *Foley* 291.] They alſo cited the Caſe of *Rex* v. *The Inhabitants of Woodend*, *H.* 13 *G.* 1. which was upon an Appeal from an Order of two Juſtices made for the Removal of *Elizabeth Buncher* from *Paulſpury* to *Woodend*; and the Seſſions confirmed it. The Order of Seſſions ſtated the Caſe, That *John Buncher* rented a Houſe and ſome Cloſes at *Woodend*, about 30*l. per Annum*, and inhabited the ſaid Houſe for ſeveral Years, and died inſolvent, and left a Widow and one Daughter, whoſe Name is *Elizabeth Buncher*. The Widow ſoon after removed to *Paulſpury*, into a Meſſuage or Tenement of about 40*s. per Annum* Value and ſome Lands about 10*l.* a Year, that were her own Eſtate for Life, (both Houſe and Lands being Copyhold;) and took her ſaid Daughter with her, then about the Age of fourteen: And the Daughter lived with the Mother at *Paulſpury* about two Years in the ſaid Meſſuage or Tenement: but the Mother let the ſaid *Lands* to a Tenant. The Seſſions were of Opinion, " that the ſaid *Eliza-* " *beth Buncher* was ſettled at *Woodend*, the Place of her *Father's* Set- " tlement, and *not* at *Paulſpury* where ſhe lived with her ſaid *Mo-* " *ther* as aforeſaid:" And therefore they confirmed the Order of the two Juſtices. But *this* Court held " that the Daughter gained a Settlement in *Paulſpury*, her *Mother's* Pariſh:" And, in the ſame Term,

Term, both these Orders were quashed. [*V.* 2 Lord *Raym.* 1473, *Foley* 256. *Str.* 746. S. C.]

BARTON TURFE *and* HAPPISBURGH.

The Counsel who argued in Support of the Order of Sessions in the present Case (Mr. *Lloyd*) urged, that it appears upon the Order that *Deborah* the Pauper was Daughter *in Law* to *Deborah* the Daughter of *F. Browne*, and not her *own* Daughter: For the Words are—"*T. M.* who married *D.* having *then* a Daughter." Now a Mother in Law is not bound to maintain the Children of her Husband by a former Wife, either by Nature or by Law: (2 *Bulst.* 345.) And therefore her Parish is not bound to do it.

But Mr. J. PROBYN and Mr. J. LEE held the Word "*then*" to refer to the Time of the *Hiring the Farm:* And they observed that the Fact is explained by the subsequent Expression "*her* "Daughter."

Mr. *Lloyd* argued that, If it be *uncertain*, the Court will intend "that the Justices did *right*."

Mr. J. PROBYN persisted in his former Interpretation. And then, he said, the Case will be no more than this, "Whether a "Widow removing with her Children to her *own* Estate, from "whence she is *irremovable*, does or does not acquire a Settlement "for *her Children* who remove with her as Part of her Family." And upon the Cases cited, it is clear that she *does*.

Mr. J. PAGE agreed to Mr. Justice PROBYN's Construction of the Words, as importing that *Deborah* the Pauper was *own* Daughter to *Deborah* the Widow.

Mr. J. LEE also concurred in it. But he observed that it appeared that the Daughter was then *ten* Years of Age: Which Circumstance raised some Doubt in him.

It is certain, he said, that a Settlement is gained *equally* in the Case of a *Mother* when the *Father is dead*, as in the Case of a *Father*, by a legitimate Child. But his Doubt was upon the *Age* of the Child; which was *ten or more*, when the Mother went into the Parish of *Happisburgh:* Whereas in the Cases cited, the Age of the Children was under seven Years. He said, He did not put it upon the Foot of Nurture; but doubted whether a Child acquires a new Settlement *after that Age*, by going with the Mother to the Place of her Settlement.

Mr. J. PROBYN.—It appears, upon the Order of Sessions, that this Child had not acquired any Settlement of her *own*. She must follow therefore the Settlement either of her Father or Mother. Now in all those Cases that have been mentioned, the Child had the

BARTON TURPE *and* HAPPISBURGH.

ſame Settlement under the *Father* as *this* Child had: And this Order (as now returned) prevents us from ſurmiſing that ſhe gained any Settlement of her *own*. Indeed if the Child be under ſeven Years of Age, it muſt go with the Mother for Nurture: But that was not the preſent Caſe.

Mr. J. PAGE.—I think the *Age* makes *no Difference*. Indeed on Account of Nurture, a Child under ſeven muſt go with its Mother: But it remains ſettled at the Father's Pariſh, and maintainable by that Pariſh. But where the Mother goes to an Eſtate of her own, from which ſhe is irremovable, a Child may, after the Father's Death, gain a Settlement under the *Mother* as well as it could under the *Father*.

Mr. J. LEE.—I always took it that in Caſes of legitimate Children, the firſt Thing to be inquired into was the Settlement of the Father: If that can not be found, *then* indeed the Child's Settlement muſt follow the Mother's. But this being a *derivative* Settlement from the Father; and the Child being of *ſo advanced an Age*, I ſhould think it ought not to be broken into and transferred to that of the Mother, *unleſs* it appeared that the Daughter had acquired a Settlement of her *own*: I ſhould be glad to look into it.

It was ordered to ſtand over.

ADJOURNED.

It now came on again.——

LORD HARDWICKE ſaid, He did not know any ſuch Difference between one Kind of Settlement and another: The Father and Mother's Settlement is juſt the *ſame* Caſe. In the Caſe that has been cited between the Pariſhes of *Paulſpury* and *Woodend*, the Child was thirteen or fourteen Years of Age. I think the Orders muſt be quaſhed.

Mr. J. LEE.—I never apprehended any Difference between the Caſe of the *Father* and the *Mother*; for, that is the *very ſame*, where a Settlement is to be gained: But I thought that if the Child was of *ſufficient Age to gain a Settlement*, it might have been neceſſary that it ſhould appear upon the Order "that *no ſubſequent one* "*had been gained* by ſuch Child."

In the Caſe between the Pariſhes of St. *George Southwark* and St. *Catharine* near the *Tower*, it is ſtated "that the Child *had not gained* "any ſubſequent Settlement." But in the Caſe of *Paulſpury* v. *Woodend*, it was *not ſo ſtated*, nor any Thing *one* Way or the *other*. I had a Notion that it had been held neceſſary "that *this ſhould appear*;" and upon looking into my Notes, I find that it was ſo, in *Trin.* 12 *Ann.*

12 *Ann.* between the Pariſhes of *Woburn* and *Woking*; where two Children, the one *twelve* the other *eight* Years old, were ſent to the Father's Place of Settlement as the Place of *their* laſt legal Settlement. An Exception was taken "that the Children appearing to "be of theſe Ages, their Father's Settlement did not neceſſarily "give them a Settlement in the ſame Place." And Lord Chief Juſtice *Parker* laid it down "that where Children are under ſeven "Years of Age, the Father's Settlement is their Settlement: But if "they are *above* ſeven, then the Law ſuppoſes that they may have "gained a Settlement *for themſelves*, UNLESS *the contrary appears*; "and ſhall not therefore be taken for granted to be ſettled with the "Father." So that it ſeems ſuch Children *above* ſeven Years old muſt be taken to have gained a ſubſequent Settlement for themſelves, *unleſs* the contrary appears. [*V. Caſes of Settlement*, pa. 17, No. 24. S. C. *accord*: But in *Foley*, pa. 315, S. C. is reported much leſs ſtrong.] BARTON TURFF *and* HAPPISBURGH.

And in the Caſe between the Pariſhes of *Edgeware* and *Harrow*, in Queen *Anne's* Time, *Parker* Ch. J. held, "that the Settlement "of Children was gained not by Inheritance, but by their being "irremovable." [*V.* S.C. in *Foley's Poor Laws*, pa. 294.]

But the Caſe of *Paulſpury* and *Woodend* is directly contrary to the Caſe of *Woburn*, and is exactly the ſame Caſe with the preſent: For there the Child was fourteen Years of Age; and it is *not* there ſtated "that ſhe had *gained no other Settlement*."

Therefore (though I have no Note of that Caſe) I am not for ſetting the Queſtion at large again.

LORD HARDWICKE.—I believe, in the Caſe of *Harrow* and *Edgeware*, it was ſaid that there ſhould be negative Words "that "they had gained *no other* Settlement." But it is going a great Way to *preſume a Settlement* when *none appears*: And it is here ſufficiently ſtated to be the Place of the legal Settlement of the Child.

Mr. J. PROBYN.—The *derivative* Settlement of a Child from his Father is what he has a Right to by *Inheritance*.

LORD HARDWICKE.—If we go into *Preſumptions*, upon ſpecial Orders, it will make them very uncertain. The latter Reſolutions are to be followed.

BOTH ORDERS QUASHED. *Vide Poſt.* No. 19, S. P. *agreed.*

Rex.

No. 16. *Wednesday* 25th *June* 1735.

Rex *v.* Inhabitants of Dilwyn.

Reſidence for 40 Days is neceſſary to compleat a Settlement, by *renting* 10*l.* a Year.

TWO Juſtices removed *William Smith*, *Mary* his Wife, *William*, *John*, *Mary* and *Anne* their Children, All under ſeven Years of Age, from *Dilwyn* to *Leominſter*.

Upon an Appeal, the Order of Seſſions ſtates, That upon Examination of *William Smith* the Father, upon Oath, it appeared that about four Years ſince he rented a Tenement and Lands, for a Year, in *Leominſter*, at 40*l.* That he lived in it one Year, and paid his Rent. That the next Year, he rented another Farm of 80*l.* a Year in the *ſame* Pariſh, and continued in that Farm for one whole Year. The Year following, the ſaid *William Smith* agreed for a Farm in the Pariſh of *Eardiſland*, to hold from *Candlemas*, at 44*l.* yearly Rent; and in the Month of *April* following, he *ſowed* about fifteen Acres of the Land with Grain; and in *May* following he *came to live* on the ſaid Farm, and *inhabited there about three Weeks*; and then the greateſt Part of his Stock of Cattle was ſeized and driven away, for Rent due to his former Landlord: Whereupon the ſaid *Smith* then came to a *new Agreement* with his Landlord in *Eardiſland*, and agreed to *quit that Farm* and to pay the ſaid Landlord 8*l.* for Satisfaction, and to *continue in the Farm-houſe* and Garden, and to have a ſmall Parcel of Paſture with it at the Rent of 3*l.* 10*s.* to be paid at the *Candlemas* following. That at the Harveſt after, his Landlord ſeized upon the fifteen Acres of Grain. The Pauper finding himſelf thus diſtreſſed, about *Michaelmas* before the Expiration of his Term in *Eardiſland*, rented a Houſe, Garden, and the Aftermath of a Meadow in *Dilwyn*, to hold from that Time to *May* following, and agreed to pay 5*l.* for the Houſe and Garden, and 15*s.* for the Graſs of the Meadow. That he entered with his Family, and continued there according to his Agreement, but paid *no Taxes* or executed *any Office* in *Dilwyn*. Upon the whole, the Seſſions diſcharged the ſaid Order of the two Juſtices.

On *Saturday* the 7th of *June* 1735 a Motion was made by Mr. *Philips*, to quaſh the Order of Seſſions; becauſe the Settlement in *Leominſter* was undoubtedly *good*; and the Pauper appeared to have gained *no new Settlement ſince*: For the Reſidence under the 44*l.* a Year Leaſe in *Eardiſland* was *leſs than forty Days*; and there can be no Pretence of his gaining a Settlement in *Dilwyn*.

A Rule

A Rule was then made to ſhew Cauſe: And Cauſe was now attempted to be ſhewn by Serjeant *Birch* and Mr. *Abney*.

DILWYN *and* LEOMINSTER.

LORD HARDWICKE ſaid there was *no Inhabitancy for forty Days* in *Eardiſland* under the Leaſe of 44 *l. per Annum*; and therefore there can be no Settlement gained under it; And the next Agreement with his Landlord in *Eardiſland* was quite a ſeparate Contract, and can not be tacked to the former. It did not take Effect till the other was finiſhed.

Vide Poſt. No. 110. *Rex v. Inhabitants of Weſt Sheſford.*

Per Cur.——

The ORDER *of* SESSIONS QUASHED: And *The* ORIGINAL ORDER AFFIRMED.

Rex *v.* Inhabitants of St. Mary White-Chapel.

No. 17. *Wedneſday* 25th *June*, 1735.

A *Leaſehold* Eſtate of *more* than 30*l.* Value, is ſufficient to gain a Settlement.

TWO Juſtices made an Order for the Removal of *Charles Couklin* from *Mile-End New-Town* to St. *Mary White-Chapel*: And upon an Appeal, the Seſſions confirmed that Order.

The Seſſions ſtate the following Caſe—That the Pauper had gained a legal Settlement in St. *Mary White-Chapel*. That having a *Leaſehold of* 5*l. per Annum Value* in *Mile-End New-Town*, for the Term of *fifty Years*, for which he paid only 6*d. per Annum* reſerved Rent, he went and *lived there upon it*, and was a *Houſekeeper twenty-five Years*, and then *ſold the Remainder* of his Term and all his Intereſt therein *for* 32 *l.* And upon Debate, a Queſtion ariſing "Whether the ſaid *Charles Couklin*, by his having ſuch Leaſehold "Meſſuage in *Mile-End New-Town* for ſuch Term of Years and "of ſuch yearly Value as aforeſaid, and by his living in the ſame "Hamlet in ſuch Leaſehold Meſſuage, and by his being a Houſe-"keeper there in the ſame for twenty-five Years as aforeſaid, ob-"tained a legal Settlement in *Mile-End New-Town*, or not:" The Seſſions held that he did *not*: But they held St. *Mary White-Chapel* to be his Place of laſt legal Settlement; it not appearing that he had ſince gained any other legal Settlement.

On *Saturday* 17th *May* laſt, a Motion was made to quaſh theſe Orders: For that the Pauper had plainly obtained a legal Settlement in *Mile-End New-Town*.

Upon ſhewing Cauſe againſt quaſhing them, on *Tueſday* 17th Inſtant (*June*,) the Counſel for *Mile-End New-Town* obſerved that the Pauper had *ſold* all his Intereſt in *Mile-End New-Town before* he

St Mary White-Chapel and Mile-End New-Town.

* 2 Seſſ. Caſ. 161. 1 *Barnardiſt.* 297. S. C.

he was removed: *After* which Sale, they argued that he was removable from thence. And they cited the Caſe of *Rex* v. *The Inhabitants of Sabridgeworth*, * *H.* 3. *G.* 2. as a Caſe in Point.

The Court all ſeemed to be ſtrongly of Opinion, that the Settlement was in *Mile-End*; and that the *Selling it* made *no* Difference. However, in order to look into the Caſe of *Sabridgeworth*, the preſent Caſe was adjourned.

Upon its coming on again, this Day, it appeared that that Caſe was thus ſtated.—*Edward Sheppard* the Pauper was born at *Sabridgeworth:* And his Father being ſeiſed in Fee of a Copyhold Cottage in *Aldbury*, which uſed to be let at 25 *s. per Annum*, did, about a Year and a half before the Removal, ſurrender the ſaid Copyhold Cottage to his ſaid Son *Edward Sheppard* and his Heirs; who was admitted to the ſame to him and his Heirs, in the Life-time of his ſaid Father, upon his ſaid Surrender. Immediately upon ſuch Admiſſion of the ſaid *Edward Sheppard* the Son, he went into and dwelt in the ſaid Copyhold Cottage for about one Year and a half; and *then ſold* the ſame for 14 *l.* 2 *s.* 6 *d.* being the *full Value* thereof. Upon this Sate of the Caſe, the Seſſions declared their Opinion, "that the ſaid *Edward Sheppard* the Son gained *no* "Settlement in *Aldbury*;" and therefore confirmed the Order of the two Juſtices which had removed him from thence to *Sabridgeworth*. Mr. *Lee* moved to quaſh both thoſe Orders; for that this Eſtate in *Aldbury* was the Pauper's own, by a Surrender from his Father: And there was no Difference between a Surrender from a Father, and a Deſcent. But the Court denied the Motion, without ſo much as making a Rule to ſhew Cauſe. For, they not only thought that the Surrender looked fraudulent; but, beſides, they took Notice that the Surrender was *ſince* the late Act of Parliament of 9 *G.* 1. *c.* 7. which fixes the Purchaſe-Money at 30 *l.* The Intent of which Act they held to be that the Purchaſer ſhould be a Perſon able to pay ſo much. [V. *Seſſions Caſes*, Ed. 1750, Vol. 2. pa. 161, S. C.]

The Counſel for *Mile-End New-Town* ſuppoſed this cited Caſe to be ſimilar to the preſent; becauſe the Pauper had, in both Caſes, *ſold* his Intereſt *before* the Order of Removal.

But Lord Hardwicke thought this Caſe of *Sabridgeworth* not at all to the Purpoſe; becauſe the Surrender to the Pauper was there made *after* the Act of Parliament of 9 *G.* 1. *c.* 7. by the 5th Section of which, it is enacted "that no Perſon ſhall gain a Settle-

"ment

tlement " by Virtue of any Purchaſe whereof the Conſideration " doth not amount to *thirty* Pounds, *for any longer or further Time* " than ſuch Perſon ſhall *inhabit* in ſuch Eſtate; and ſhall *then* be " *liable to be removed.*" And *that* was only of the Value of 14 *l.* 2 *s.* 6 *d.*

St. Mary, Whitechapel and Mile-end, New Town.

The Court held this to be a very Plain Caſe: And

BOTH ORDERS WERE QUASHED.

Rex *v.* Inhabitants of Tedford.

No. 18.

Wedneſday 22d *June* 1735.

TWO Juſtices removed *Francis Gill*, *Elizabeth Gill* his Wife, and *Elizabeth*, *Dorothy* and *William Gill* their Children, from *Waddingham* to *Tedford*: Upon Appeal, the Seſſions confirmed the Order of the two Juſtices. The Appeal was received, and adjourned to *Michaelmas* Seſſions; and a Caſe in the mean Time ordered to be made for the Judge of Aſſize, on 9 *G.* 1. *c.* 7. *ſect.* 5. *viz.*— That *Francis Gill* was ſettled at *Tedford*; and contracted with *John Atkinſon* for a Houſe and Curtilage in *Waddingham* for 39 *l.* which was conveyed to *Gill* and his Heirs accordingly, in Conſideration of 39 *l.* *Gill* paid 9 *l.* and *Iſaac Briſtol paid the remaining* 30 *l.* to *Atkinſon*, *by Gill's Order.* The Conveyance was dated 2 *May* 1730; but was not executed till the 19th of *May* 1730. Upon 18 *June* 1730, *Gill mortgaged the Premiſſes to the ſaid Iſaac Briſtol*, by demiſe for one thouſand Years, under a Proviſo to be void on Payment of the Money in a Year. *Gill continued in Poſſeſſion about four Years* after the Mortgage: Then *Briſtol* entered, by Virtue of the ſaid Mortgage and a Releaſe of the Equity of Redemption. Then the Inhabitants of *Waddingham* procured *Gill*, being out of Poſſeſſion, to be removed to *Tedford*. The Order of Seſſions recites that, Whereas the Judges of Aſſize had not Time to hear and determine it; and whereas the Parties agreed this Caſe to be the true State of the Caſe; and then it proceeds thus——Now upon hearing Counſel and *further Evidence* on both Sides, this Court doth declare and adjudge " that the Purchaſe made by *Gill* was *fraudulent*; and " that the Settlement of *Francis Gill* his Wife and Children was at " *Tedford*: But the Pariſhioners of *Tedford* are no Way concerned " in the ſaid Fraud."

A *Purchaſe* for *more* than 30 *l.* unleſs it appear to be fraudulent, is not within the Statute 9 *Geo.* 1. *c.* 7. altho' Part of the Purchaſe-money be paid by a third Perſon. *V.* S. C. in 2 *Str.* 1014, (extremely ſhort;) and in *Seſſions Caſes*, Edit. 1750. Vol. 2. pa. 237, No. 164.

A Motion having been made to quaſh theſe Orders and a Rule

TEDFORD and WADDINGHAM.

to ſhew Cauſe obtained thereupon, it came on to be argued, upon *Thurſday* the 1ſt of *May* 1735.

The Counſel for *Tedford* took Exceptions, firſt to the Form of the Order of the two Juſtices; which runs thus—"*Lincolnſhire* "*Lindſey* To wit. To the Churchwardens and Overſeers of the "Poor of the Pariſh of *Waddingham in the Parts aforeſaid.*" Now, *Non conſtat* what are "*the Parts aforeſaid:*" And the Court will not take *judicial* Notice what they are; and *Waddingham* may be in *another County.*

2d *Exception* to the Order of the two Juſtices.—The Complaint is that "*Francis Gill* and *Elizabeth* his Wife, *Elizabeth, Dorothy* "and *William Gill* their Children, *has* lately intruded themſelves "into the Pariſh of *Waddingham:*" And then they adjudge that *Tedford* is the *legal* Settlement, (not ſaying the *laſt* legal *Place* of Settlement.)

As to the *Merits*—It is a Caſe *out of* the Act of Parliament of 9 *G.* 1. *c.* 7. *ſect.* 5. And the Juſtices, in their Adjudication, depart from their Premiſſes: For, the Act does not extend to any Caſe where the Conſideration exceeds 30 *l.* But here the Conſideration is *above* 30*l.* and is therefore out of the Act. And the Conſideration appears to have been *bonâ fide* paid by *Gill*; Part by *himſelf*, and Part by his *Order*, (though by the Hands of *Briſtol.*) It does not even appear that *Briſtol* had lent it him: Therefore it ſhall be taken that it was *Gill's* own Money.

It is not ſtated for how much Money the Mortgage was made, nor upon what Conſideration. And the Pauper continued in Poſſeſſion and enjoyed the Houſe four Years *after* it was mortgaged.

No Circumſtances of Fraud are ſtated: And therefore if this Concluſion of the Juſtices at Seſſions be drawn from the *Premiſſes ſtated*, it is a Concluſion contrary both to the Law and to the Fact; and the Court will themſelves judge of it, and ſet it right.

The Counſel for the Orders anſwered, That "*Lincolnſhire Lind-* "*ſey*," is the conſtant Form: And ſo it is always, where Counties are divided into ſeparate Diviſions. And the Court *will take Notice* of this: And ſo they alſo will, that *Waddingham*, being *in that Diviſion* of the County, is *within that County.*

Ante, No. 12.

2dly, "*Has*" is ſufficient in the Complaint: But, however, the *Adjudication* is *right.*

As to the *Merits.*—Whether the Sum paid as Conſideration-money was greater or leſs, if there be *Fraud*, it poiſons the whole. If this is not to be conſidered as a Purchaſe under 30*l.* *bonâ fide* paid, ſuch

such a Construction would destroy the End and Intent of the Act of Parliament. The Justices are the proper Judges of Fraud; and they have adjudged "that it was a fraudulent Purchase." And it appears upon the Face of the Case, as stated for the Judge of Assize, "that "it was so." But that is not all: They are not confined to this State of the Facts. For they heard *further Evidence* on both Sides, before they adjudged the Purchase to be fraudulent. TEDFORD and WADDINGHAM.

LORD HARDWICKE.—It must be further Evidence of the *same Fact*: For the State of the Case made for the Judge of Assize was before agreed between the Parties to be the *true* State of it.

There is no great Weight in the Exceptions to the Form. That of the * *County* is the constant Form: The *others* are only to Incorrectnesses. * *V. ante*, No. 12. S. P. settled.

As to the Merits.—It is a new Case. There seem to be two Questions: (1st,) Whether this be a Case *within* the Act of 9 G. 1. c. 7: (2dly,) If it be not, then, Whether this Purchase so far *appears* to be a Fraud, as that the Justices had Authority, *without* any Aid from this Act of Parliament, *to adjudge it fraudulent*, and that no Settlement was gained under it.

1st, It does *not* appear to me to be within this Act. The Act says that "none shall gain a Settlement by Virtue of any Purchase, "whereof the Consideration doth *not amount* to the Sum of 30 *l.* "*bonâ fide* paid, for any longer Time than he shall inhabit in such "Estate." So that it is *confined* to Purchases *under* 30 *l. bonâ fide paid*. Consequently, if the Vendor *had* such Consideration of 30 *l. bonâ fide paid to him*, it is *not* within this Act. Now in the present Case, the Consideration was 39 *l.* and *was bonâ fide* paid to the Vendor. And it would be pretty hard, to say that the Justices had a Power upon this Act to inquire "whether the *Purchaser borrowed* "the Money or not." It is a common Case, to borrow Money to make Purchases: Nothing is more frequent, than to borrow a Sum to make up the Price.

2dly, Whether, *without* the Aid of this Act, the Justices have Authority to consider this as a colourable *fraudulent* Purchase contrived and executed in Order to give this *Francis Gill* a Settlement in *Waddingham*.

I think they might do this in Case of a *Purchase*, as well as in Case of gaining a Settlement by renting 10 *l. per Annum*, provided that the Fraud sufficiently appears: Because the *Fraud infects the whole*, and makes it *no Purchase*. But then the next Question is, Whether the Fraud sufficiently appears in the present Case.

TEDFORD *and* WADDINGHAM.

It was ſaid "that the Juſtices are the proper Judges of Fraud." But *Fraud* is a Fact which muſt be *found*. It muſt be ſo by a Jury upon a ſpecial Verdict: (For, in that Caſe, it is not ſufficient to find *Premiſſes only*, without drawing any Concluſion.) The Juſtices are Judges of the Fact: And they may judge of the Fraud ariſing from the Facts: But we are Judges of the *Law* upon the Facts, though not of the Facts themſelves *. *If* they had *generally* found the *Fraud*, we might have been *bound by* ſuch a *general Finding*: But when they *ſtate* the Facts particularly, the Matter is as much open for *our* Determination upon it, as it was for *theirs*. Here, the Facts are particularly ſtated: So that *we can* determine upon them, as well as *they* could.

* *V.* 1 *Stra.* 85. accord.

The reſiding four Years in this Houſe, (which is one of the Facts ſtated) is, to me, a very material Circumſtance in this Caſe: And it is expreſsly ſtated that "the Pariſhioners of the Pariſh of *Tedford* "were no Way concerned in the Fraud."

It has been urged "that there might be *other* Facts upon which the "Juſtices might adjudge the Fraud:" Becauſe the Adjudication is ſaid to be "upon hearing further Evidence." And, indeed, if the Words "upon hearing further Evidence" were to be taken for Evidence of other *new* Facts, we could not control their Determination: But it is much more natural to ſuppoſe the further Evidence to have been of the *ſame* Facts; becauſe the Facts were *before agreed*.

The Juſtices are only to conſider concerning Frauds which *regard the Pariſh* (in order to gain a Settlement in it.) They are not to inquire concerning Fraud *between the Parties*: That would make them a Court of *Chancery*. Mr. *Briſtol* is not ſtated to have been even a *Pariſhioner of Tedford*: And the Finding "that the Pariſhi-"oners of *Tedford* were *no Way concerned in the Fraud*," excludes all Preſumption that they *were* ſo.

The Facts ſtated in this Order do not, in my Opinion, warrant the Concluſion of the Juſtices.

Mr. J. PAGE.—This Caſe does *not* ſeem to me to be within the Act of 9 G. 1.

But, *without the Aid* of that Act, the Juſtices have a Right to inquire into the Fraud. I remember a Caſe (I was of Counſel in it) of St. *Giles's* in *Cambridge*.—The Pauper bought a Cottage there, and came thither to ſettle: And from thence he was removed, by an Order of two Juſtices. Upon this, the Man brought an Action of Aſſault and Battery for removing him. It was tried before Lord Chief Juſtice *Holt*: And it was inſiſted "that an Action would not lie, be-

"cauſe

"cauſe it was a fraudulent Purchaſe, and ſo no Settlement." It appeared that the Man was not worth 1 *s.* but had borrowed the whole Purchaſe-Money of a Gentleman who had an Eſtate in the Town. *Holt* held "that the Juſtices had *a Right to enquire* into Purchaſes "of that Kind; and had a *Right to remove*, if they found them "*fraudulent*." And the Plaintiff was non-ſuited. Yet there the Seller was no Party to the Fraud.

Here is no Sign of Fraud, in the preſent Caſe, between the Parties intereſted: And it is expreſsly ſtated, "that the Pariſh of *Tedford* was not concerned in any." Beſides, it is frequent for Perſons to purchaſe without having ſo much ready Money as the *whole* Purchaſe amounts to. Therefore *this Circumſtance alone* can be no Evidence of Fraud, in the preſent Caſe.

I muſt take the Juſtices to have ſtated *all* the Facts. For, otherwiſe, it could not be the *true* State of the Caſe: Which it is *agreed* to be. Indeed, if the Juſtices had not ſtated the Caſe, we could not have looked into it: But *where the Facts appear to us*, *we* are to judge of the *Fraud*. And, for my Part, I do *not* ſee that this amounts to a Fraud.

Mr. J. Probyn.—The Queſtion is, Whether this be an Order ſtating a *complete* ſpecial Caſe for the Opinion of this Court; or, Whether what appears to us was only a *Part* of the Caſe, which Part only they referred to the Opinion of the Judge of Aſſize, reſerving the Conſideration of the full and whole Caſe to themſelves.

They ſay that that Caſe ſtated to the Judge of Aſſize was "agreed "to be the *true* State of the Caſe;" That is, *ſo far* as it was ſtated to him. The Judge did not meddle with it. The further Conſideration of it had been reſerved to themſelves: And when it came back, they heard *further Evidence* on both Sides. The only Fraud that the Juſtices could take Notice of was *ſuch* a Fraud as would *affect the Pariſh* in which the Settlement was to be gained by the Purchaſe.

I own, I think that *as far as the Caſe is ſtated* there does *not* appear any Fraud: And the rather, ſince the Man continued four Years in Poſſeſſion after he had mortgaged it. And it is expreſsly ſtated "that the *Pariſh* of *Tedford* had no Concern in any Fraud." The Order does not mention the Conſideration of the Mortgage or of the Releaſe: So that we can judge nothing from thence.

But my Doubt is, Whether this can be conſidered as a complete ſpecial Order fully ſtated for the Judgment of this Court, as the Seſſions

TEDFORD and WADDINGHAM.

sions only consulted the Judge of Assize upon a *Part* of the State of the Case; and as the further Evidence seems to go to *new* Facts: (for they had *no Need* to hear *further* Evidence upon Facts *agreed* on by both Sides.) If the further Evidence went to new Facts, then the Justices were Judges of the Facts that appeared before *them*: Of which, *we* can not inquire or determine, so as to take it out of their Hands into our own.

Mr. J. LEE.—If this State thus agreed to be true be not the *whole* of the Case, there will not indeed be a sufficient Reason for quashing the Order. In general, where a Case is specially stated, *that* Case is taken to contain the *full* Reasons of the Determination made by the Sessions: And therefore if the Court hold those Reasons to be ill, they will quash the Order of Sessions.

I should rather incline to think that this State of the present Case contains the *whole* of the Case: It appears to be *agreed by Counsel on both Sides* to be the *true* State of the Case. It was referred to the Judge of Assize: Who did not meddle with it. When it came back to the Sessions, there might be *other* Justices present than were present at the former Sessions; who might not take it on the Concession of the Counsel, but might desire to enter, themselves, into the Examination of the Matter.

If this State of the Case contains the *whole* of the Facts, then the Adjudication of the Sessions signifies nothing, if *we* are of Opinion that the Facts are *not sufficient to warrant* their Conclusions: For *we* are to draw a Conclusion from the Facts, when we have them fully before us.

The Subject of the Act of Parliament is only the *Payment* of the Consideration-Money. If there be an *actual Payment* of 30 *l. bonâ fide*, it is not within the Act. Now here is 39 *l. bonâ fide* paid.

I can *not* see that this is a fraudulent Purchase, with Regard to the Settlement. The constant Determination has been, "that when "a Person comes to live in a Tenement of his *own*, though under "40 *s. per Annum*, Free, Copy or Leasehold, he is irremovable." Now this Man appears to have paid 9 *l.* himself: And it does not appear that the Remainder was borrowed. And the Man lived four Years in it. It does not at all appear what was advanced to him upon the Mortgage. Therefore this Man was irremovable after forty Days Continuance at *Tedford*: And consequently he was settled there.

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TEDFORD and WADDINGHAM.

The moſt natural Meaning of the Words of the Order is, "that "this State, agreed to be the true one, contains the *whole* Caſe." And if it does, then it is a bad Order.

The Court were unanimous, That *if* this State of the Caſe be taken to be the *whole* State of the Facts, then the Order is bad.

LORD HARDWICKE.—It would be pretty hard to ſay that theſe Words "further Evidence" (whether inſerted by the Clerk of the Peace of Courſe, or by Order of Juſtices) ſhould *deſtroy* the Caſe before ſtated. There is no certain Form of ſubmitting the Caſe, by the Seſſions, to the Judgment of this Court; nor any Occaſion to do it at all. If this Reference to the Judge of Aſſize was only of a *Part* of the Caſe, it was an *impertinent* Reference. The Seſſions might hear further Evidence; and yet *no further Fact* might appear to them: *If there had*, it is probable they would have *ſtated* it.

Mr. J. PROBYN.—The Seſſions do not always refer the whole Caſe to the Judge of Aſſize: Sometimes they refer only a particular Point; and reſerve the final Determination of the whole Matter to themſelves. The Seſſions might therefore hear further Evidence concerning the *Fraud*; though they could have no Kind of Occaſion to hear further Evidence to the *Facts agreed to be truly ſtated*.

The Court took ſome Time to conſider.

And now—

LORD HARDWICKE ſaid, The Queſtion upon the *Merits* was, "Whether it ſufficiently appeared, upon the Facts ſtated, that "this was a *fraudulent* Settlement:" We thought it did *not*. But then the Queſtion was, "Whether the *whole Fact* appeared to us;" becauſe the Seſſions adjudge the Purchaſe to be fraudulent, upon hearing *further* Evidence.

I own I thought the *whole* Caſe was *ſufficiently* before us: Otherwiſe, the Juſtices muſt have done a very impertinent Thing in repreſenting this to be the *true* State of the Caſe. It could not be a true State of the Caſe, if they heard further Evidence to *new* Facts. I dare ſay that (if the Truth was known) that further Evidence was only of what paſſed before the Judge of Aſſize to whom it had been referred.

Mr. J. PAGE and Mr. J. LEE held the ſame Opinion as before: And Mr. J. PAGE called it blowing hot and cold, unleſs the Caſe ſtated as the *true* one was taken to be the *whole* State of the Facts.

Vide Poſt. No. 61. 177. as to what ſhall, or ſhall not be deemed a *Purchaſe* for 30*l.*

BOTH ORDERS WERE QUASHED.

Michaelmas

Michaelmas Term

9 Geo. 2. 1735.

No. 19. **Rex. *v.* Inhabitants of Oulton.**

Friday 7th *Nov.* 1735.

After the Death of the *Father*, a *Child* follows the Settlement of its Mother.—But the Seſſions cannot be obliged, *by Rule*, to ſtate a ſpecial Caſe.
See a ſlight Account of S. C. in *Seſſions Caſes*, Ed. 1750, Vol. 2. pa. 296, No. 179.

TWO Juſtices made an Order for the Removal of *Francis Ailmer* under the Age of ten Years, *Rachael Ailmer* under the Age of eight, and *John Ailmer* under the Age of five Years, from *Wells* next the Sea to *Oulton:* And upon Appeal the Seſſions confirmed that Order.

Caſe.—*John Ailmer* their Father was ſettled in *Oulton*; and the Children were born there: Their Mother had a Copyhold Meſſuage and Lands in *Burnham Overy* in her Huſband's Life-time; and after her Huſband's Death removed thither with her ſaid three Children, and dwelt in the ſaid Houſe, and dwelt and continued there with them three Months and upwards; and then ſold the ſaid Houſe and Lands.

N. B. This ſpecial Caſe was *not ſtated upon the Order of Seſſions*; which did not ſtate any Caſe at all, but only affirmed the original Order of the two Juſtices *generally*, " upon hearing all that was " and could be alledged and ſaid by Counſel and Witneſſes on both " Sides, and full Debate of the Matter." Whereupon the Counſel for *Oulton* excepted, at the Seſſions, to their *refuſing* to ſtate the Caſe ſpecially: And the Exceptions were returned up together with the Orders; and are as follow.

" Whereupon immediately, ſitting the Court, *J. Jermy* Eſq; " and *J. Howes* Eſq; of Counſel with the Inhabitants of *Oulton* " aforeſaid, delivered into Court their Exceptions, in Writing un- " der their Hands, to the above written Order of Court: Which

" ſaid

" ſaid Exceptions were then *read and received* by the Court, and " are hereunto annexed."

Oulton and Wells.

" We humbly except to the Judgment given by this Court, " That, &c. as erroneous: For that the ſaid Order of two Ju- " ſtices ought to have been diſcharged; becauſe it was proved, &c. " And we having deſired the Court to find the Matter ſpecially, " and the Court having denied ſo to do, we therefore humbly except " &c, as erroneous; for that the ſaid Order of two Juſtices ought " to have been diſcharged; for that the ſaid three Children removed " gained a legal Settlement in *Burnham Overy*, in Right of their " Mother's having the ſaid Meſſuage and Lands in *Burnham Overy* " aforeſaid, and inhabiting in the ſaid Houſe, and the Children re- " moved alſo dwelling in the ſaid Houſe with their Mother three " Months, and then the Mother ſold the ſaid Houſe and Lands."

J. Jermy. *J. Howes.*

This was under-written—" Read and received in Court 25 *July* " 1734:" And ſigned by the Clerk of the Peace.

Berney.

On *Tueſday* 29th of *April* 1735, a Motion was made to quaſh this Order of Seſſions confirming the Order of two Juſtices together with the ſaid Original Order: For that the *Mother's* going to ſettle upon her *own* Copyhold in *Burnham Overy* gained a Settlement there for her *Children* as well as for herſelf. So in the Caſe between the Pariſhes of *Paulſpury* and *Woodend*, in *M.* and *H.* 13 *G.* 1 *B. R. A.* had a Wife and Child and lived fourteen Years in *Woodend*; and then died: The Wife and Child, after the Death of the Father, went to *Paulſpury* into the Wife's own Copyhold Houſe, and lived two Years there.—The Court agreed that the Mother gained a Settlement at *Paulſpury* as well for her Child as for herſelf. So likewiſe in the Caſe between the Pariſhes of *St. George Southwark* and *St. Catharine* near the *Tower*, in *M.* 1 *G.* 1. the Father being ſettled in *St. Catharine's*, and having a Wife and ſix Children, died: After the Death of the Father, the Widow and her ſix Children went to live in *St. George's Southwark*, and lived there four Months in a rented Tenement of 12 *l. per Annum*.——The Court held that the Mother gained a Settlement as well for her Children as for herſelf.

Lord Raym. 1473. Foley 256. Str. 746.

Foley 254. 1 Seſ. Cas 69.

See alſo, *Ante* No. 15. S. P.

OULTON *and* WELLS.

At the Time of this Motion, the Order of Seſſions was not in Court. On *Thurſday* 1ſt *May* 1735, it was produced.

LORD HARDWICKE.—To what Purpoſe ſhould we make a Rule to ſhew Cauſe why this Order of Seſſions ſhould not be quaſhed? For, I do not ſee that we can ever make ſuch a Rule *abſolute*; becauſe this that is alledged to have been the real State of the Caſe, *does not appear to us* to be the Fact. And how can we take it for granted, that it was the real Fact? *To be ſure, it is a Thing very much to be cenſured and diſcommended, when an inferior Juriſdiction endeavours to preclude the Parties from an Opportunity of applying to a ſuperior Juriſdiction.* But ſtill we muſt go according to the due Courſe of Law.

Mr. J. PAGE.—I never knew an Inſtance that this Court could *force* the Juſtices, againſt their Will, to *ſtate a ſpecial* Caſe.

Mr. J. LEE.—This alledged Caſe, ſuppoſing it to be the Truth, is directly contrary to the Determination of that of *St. George's Southwark*. Therefore I very much incline to come at it if I can.

THE COURT hinted to the Counſel who moved to quaſh the Order of Seſſions, that they might look narrowly into the Order, to ſee if they could find any Defects in *Form:* And in that View, it was at preſent adjourned.

The Day following, the Counſel for quaſhing the Order moved for a Rule to ſhew Cauſe why the Return ſhould not be amended; and the State of the Caſe inſerted by the Clerk of the Peace in the Body of the Order of Seſſions.

The Court gave him a Rule to ſhew Cauſe.

On *Thurſday* the 12th of *June*, Cauſe was ſhewn againſt this Method of putting the State of the Caſe in the Body of the Order: And the Counſel for *Wells* ſaid, "the Clerk of the Peace is doubtful "whether he *can* do it, againſt the Will of the Juſtices at Seſſions."

LORD HARDWICKE.—Here is plainly a *Determination contrary to Law*. The Righ Way would be, either "that it ſhould "go back to the Seſſions," or "that it ſhould be referred to a "Judge of Aſſize."

However, at preſent, a Rule was made upon the Clerk of the Peace, and upon the Pariſh of *Wells*, for them to ſhew Cauſe why the Return ſhould not be amended, as above.

On the laſt Day of *Trinity* Term 1735, 8 & 9 *G.* 2. the Counſel for quaſhing the Order moved to make the above Rule abſolute,—— To which

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The Counſel for the Clerk of the Peace had no Objection, if the Court thought that he might do it. But, the Rule to ſhew Cauſe appearing to have been before enlarged, nothing was taken by the preſent Motion: But the Rule ſtood enlarged to the next Term. OULTON *and* WELLS.

On *Friday* 7th *November* 1735, the Counſel for the Pariſh of *Wells* argued that the Return is perfect and complete: It wants no Amendment, nor can receive any. The Juſtices have *executed* their Authority: They *can not reſume* it again. Theſe Exceptions are only the *Allegations of Counſel*; and no Part of the Order. The Clerk of the Peace has no Authority to inſert this Caſe.

LORD HARDWICKE.—I do not ſee what it is poſſible for the *Court* to do in this Caſe, *without Conſent*. Here is *no Conſent*: So far from it, that on the contrary, the Pariſh concerned in Intereſt *oppoſes* it.

Here is an Order of Removal made by two Juſtices; an Appeal therefrom; and a *general* Order, on that Appeal for Confirmation of the Order of the two Juſtices: The Counſel at the Seſſions except to the Order of Seſſions in the Words of a Bill of Exceptions; and ſtate the Fact. *If* the Fact be true, the *Ground* of the Exceptions is *right*: For it has been * often holden in this Court, "that "a Child after the Death of the Father, may gain a Settlement "under the *Mother*, as well as it might before under the Father." * *V. Ante*, No. 15.

But the Exceptions ſet forth, "that the Court of Seſſions *refuſed* "to ſtate the Matter ſpecially." How then ſhall we do this that is now deſired of us, *without their Conſent*, even though the Clerk of the Peace ſhould conſent? It *does not appear* to us, "that the Fact "alledged is true." It is *only the Allegation of Counſel*: Or perhaps there might be Evidence given of it, and the Seſſions *might not believe* the Evidence.

This is *not* in the *Form* of a Bill of Exceptions, though it be in the *Words* of one. ‖ If a Bill of Exceptions will lie, there is then a proper Method to come at the Right and Juſtice of the Matter. The Court have ordered Amendments in Point of Form: But *what* is *now* prayed, is an Amendment in Point of *Subſtance*, *contrary* to the Opinion of the Court below. ‖ But ſee No. 24, a Reſolution "that it "will *not*."

Mr. J. PAGE.—The Conſequence of this Amendment would be, to bring the Fact only alledged by Counſel at Seſſions, into this Court to be determined here. I do not know that ever this Court inquires into the Facts upon which Juſtices have determined: And they themſelves have ſtated none; but have adjudged *generally*. This would be, to bring the Facts to be examined

Oulton and Wells.

here; which do not appear to have been admitted as the Facts by the Seſſions, though they are alledged by the Counſel. The Seſſions might not perhaps agree this to be the Fact, notwithſtanding the Opinion and Allegation of the Counſel.

Mr. J. Probyn.—This Court can take no Notice of any Thing but the Order. I remember a like Caſe in the laſt Year of the late King, where the original Examinations were returned up with the Order: But the Court ſaid they could take Notice of nothing but what was contained in the *Body* of the Order. The preſent Caſe is *leſs* ſtrong: For this is only the Allegation of Counſel; there, the original Examinations were returned up hither.

Mr. J. Lee.—The Court were in Hopes of a *Conſent*, when they made this Rule. But as it is *oppoſed*, inſtead of being conſented to, there is nothing clearer than that we *can not grant* this Motion; which amounts, in Effect, to a Rule upon the Seſſions to *oblige* them to *ſtate the Facts ſpecially*: Which would be going very much out of the Way. *If* there be any Method for that (as I have heard it ſaid "*that there is*,") it muſt be by Way of a Bill of Exceptions *: And there is a proper Writ to oblige the Juſtices to ſet their Seals to it, in caſe they refuſe to do ſo.

* *Sed v.* Poſt. No. 24.

Per Cur.

The laſt mentioned Rule *was* discharged.

Afterwards, on *Saturday* 7th *February* following, upon Mr. *Deniſon's* Motion, a Rule was made to confirm the Orders, unleſs Cauſe ſhould be ſhewn, to the contrary, before the laſt Day of the Term; two Terms being elapſed ſince they came in, and nothing done upon them.

No. 20. Rex *v.* Inhabitants of Caſtlechurch.

No Settlement can be gained, where the Contract is *diſſolved*, and Service *determined*, though by conſent, before the End of the Year. *V.* 2 *Strange*, 1022, S. C.

TWO Juſtices made an Order for removing the Pauper from *Syford* in *Staffordſhire* to *Caſtlechurch*: And upon Appeal, the Seſſions confirmed that Order.

Caſe.—The Pauper was hired for a Year to *W. B.* in *Caſtlechurch*; and came to live with his Maſter there, on the 7th of *January* 1733, and *continued* with him till the Day after *Chriſtmaſday* following; and then went away, *by his Maſter's Conſent*; and took his *Cloathes with him*, and *received his whole Year's Wages*. The Seſſions held

held this a good Hiring and *Service for a Year*; and confirmed the Order of the two Juſtices.

CASTLE-CHURCH *and* SYFORD.

To this Order an Exception was taken, as not being within 8 & 9 *W.* 3. *c.* 30. which expreſsly requires a *Continuance* in the *Service* during the Space of one *whole Year*; and which is an explanatory Act.

In the Caſe of *Burnham* and * *Pawlet*, *P.* 1 *G.* 1. the Maſter and Servant parted by Conſent, three Weeks before the End of the Term; and 9*s.* were deducted out of the Servant's Wages for that Time: This was holden to be *no* Settlement.

* *V. Foley* 206, the Caſe of *Pawlet* and *Burnham* Pariſhes.

In the Caſe of *Rex* v. *The Inhabitants of Godalming*, *H.* 12. *G.* 1. the Servant ſtayed till about a Week before the End of the Year, and then went away by Conſent, and received his whole Year's Wages: It was argued three Times; and holden to be *no* Settlement.

In the Caſe of *Rex* v. *The Inhabitants of Preſton*, *H.* 4. *G.* 2. the Servant received 2*l.* 2*s.* from two of the Pariſhioners of *Ampney*, to leave the Service of his Maſter five or ſix Days before his Time. And there, though Fraud was objected; yet the Court ſaid they could not take Notice of it, not being found: But they thought it no Settlement in *Ampney*.

The Conſent of the Maſter cannot affect a *third* Perſon (as the *Pariſh* is) though it may determine his *own* Contract.

A Rule was made to ſhew Cauſe why the Orders ſhould not be quaſhed.

On *Wedneſday* 25th *June* 1735, Cauſe was ſhewn: And the Caſe of *Rex* v. *Inhabitants of Eaton*, in laſt Term was cited†.

† *V. Antè*, No. 14.

LORD HARDWICKE.—The Act of 8 & 9 *W.* 3. *c.* 30. is an *explanatory* Law; and therefore, according to the general Rule, is *not to be extended by Conſtruction*: For the Legiſlature having thereby made a Conſtruction themſelves of a former Act, there would be no End of Conſtructions, if we were to make Conſtructions upon Conſtructions. Now it requires expreſsly a *Continuance* in the Service for a *whole* Year. How then can we abate it?

In the Caſe of ‖ *Rex* v. *Inhabitants of Eaton*, the Servant went in the *Middle* of his Service to ſee a ſick Relation; and returned to his Maſter again, upon the Maſter's Demand: And the Court took it to be an Abſence *by Licence*; becauſe the Maſter's ſubſequent Aſſent was tantamount to a Licence. But this is ſo much *cut off from the End* of the Year. Indeed it was Holyday-time (if that can make any Difference.)

‖ *Antè*, No. 14.

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CASTLE-CHURCH *and* SYFORD.

The Counſel for the Orders mentioned the Caſe of *Rex* v. *Inhabitants of Iſlip*, *P.* 7. *G.* 1. * where the Servant failed of his Service thirteen Days; ſix whereof when he was ſick; four Days in the Middle abſent without Leave, and three at the *End*, contrary to the Will of the Maſter; and there was an Abatement of Wages for the laſt three Days Abſence at the *End* of the Year: And yet it was holden a good Settlement.

* *V. Ante*, pa. 48.

On this laſt Day of *Trinity* Term 1735, the Rule was enlarged.

On *Monday* 10th *November* 1735, it came on again.

LORD HARDWICKE aſked the Counſel for the Orders, if they had any Caſe of a Settlement being holden good, where the Servant *never returned* to his Maſter after his abſenting himſelf, and yet ſuch Service had been holden to be a Service *within this Statute*. There is a great Deal of Difference, he ſaid, between the two Caſes: For, where the Servant returns and the *Maſter receives him*, it is always eſteemed a *Diſpenſation* in the Maſter, and *helps* the Diſcontinuance, and works in the Nature of a *Remitter*.

To this they anſwered—That in the Caſe of *Iſlip*, the Servant abſented himſelf the three *laſt* Days of the Service; and that too *againſt* the Conſent of the Maſter, who deducted 6*d.* for ſuch three Days Abſence; and the Servant *never returned*: And yet it was holden a good Settlement.

In the Caſes of *Ivinghoe* and *Solebay*, *P.* 4 *G.* 1. [v. *Foley* 157; *Forteſcue* 317; *Caſes of Settlements*, pa. 83, No. 109;] *Pepper Harrow* and *Frencham*, *M.* 1 *G.* 1. [v. *Foley* 144; *Lucas* 293; *Forteſcue* 322; *Caſes of Settlement*, pa. 58. No. 80;] *Rex* v. *Weſt Horſley*, *T.* 8 *G.* 1. [*Foley* 209; *Forteſcue* 216;] and *Horton* and *Houghton*, *P.* 3 *G.* 1. [*Lucas* 392; *Caſes of Settlements*, pa. 80, No. 104;] the Interruptions in Point of Time had no Weight with the Court: But the Services were holden to be good.

On the other Side, it was urged by the Counſel for *Caſtlechurch*, that neither the Letter or Intention of the Act of 8 & 9 *W.* 3. had been complied with; becauſe it plainly appears upon the Face of the Order, that both the Contract and Service determined *within* the Year. The four Caſes laſt cited, they ſaid, turned upon the particular Contract between the Maſter and Servant: None of them come up to the preſent Caſe; nor do they ſeem to be relied on, as applicable to the preſent Queſtion. The Caſe of *Iſlip* is the only Caſe the other Side ſeem to rely on. But that Caſe differs from this: For it was in that Caſe holden by Lord Chief Juſtice *Pratt*, "that where "the

" the Maſter plainly intimates that he intends to part with his Ser- " vant at the End of the Year, it was but reaſonable the Servant ſhould " look out for another Service." And in ſome Countries, where Servants are cuſtomarily hired at Statute-Fairs, it may be *neceſſary* for the Servants, if the Maſter will not give him Leave for that Purpoſe, to go to the Statute-place *without* his Leave to ſeek out for himſelf; though he ſhould abſent himſelf from his Service, on that Occaſion, three or four Days before the Expiration of the Year. CASTLE-CHURCH *and* SYFORD.

To carry the Conſent of Maſters in theſe Caſes ſo very far as is attempted, would really eſtabliſh the Miſchief under the 4 & 5 *W. & M.* which the 8 & 9 *W.* 3. was deſigned to remedy. For the Maſter may conſent to the Abſence of the Servant ſo far, that there may be only forty Days of real Service left.

LORD HARDWICKE.—Unleſs the Court be bound by the Caſes already adjudged, I ſhould think that this is *not* a good Settlement.

By 8 & 9 *W.* 3. which is an explanatory and declaratory Law, with negative Words, it is enacted * " that no ſuch Perſons ſo hired " as aforeſaid ſhall gain a Settlement without *continuing* in the ſame " Service during a *whole* Year." And we ought to take Care that we do not carry the Equity of Conſtruction ſo far as to overturn the Meaning and Intention of the Act. It is a Rule with Reſpect to explanatory Acts, not to carry equitable Conſtructions too far, and beyond what the Words will juſtify. * *V.* Sect. 41

The Legiſlature has in this Act expreſsly determined the Time of the Service: They require that it ſhall " continue during the " Space of one *whole* Year."

In the Caſes cited, it does appear that the Contract was determined. But in this Caſe, the Facts are ſtated ſo as that, upon the whole the Contract was determined, and the Pauper ceaſed to be a Servant to the Maſter. If ſo, he could not be ſaid to *continue* in the Service during the twelve Days mentioned in the Order: And conſequently it was *not* a Service for a whole Year.

The Caſe of *Iſlip* is not an Authority in the preſent Caſe; becauſe there was no Determination of the Contract; it being ſtated in the Order " that the Maſter refuſed to give the Servant Leave to go to " the Statute; and that the Servant declared he would ſerve out " his Year, and refuſed to allow for the laſt three Days." And the Reaſon given by Lord Ch. Juſt. *Pratt* for the Opinion in that Caſe, is a very good Reaſon *; and ſhews that the Contract was *not* diſſolved before the End of the Year, and that the Departure of the Servant * *V.* 1. *Stra.* 424.

CASTER-CHURCH *and* SYFORD.

Servant to ſeek out a new Service was *not* in the Servant a *Deſertion of his Service.*

Fraud infects every Thing in theſe Caſes: But where there appears no Fraud, We *can not intend* it. If there be any Fraud in this Caſe, it ſeems to be in the Maſter, in paying the Servant his Wages even for his Abſence.

Too great a Latitude in theſe Caſes may be very dangerous; becauſe there will be no knowing where to ſtop.

I think, upon the whole, that this is *no* good Settlement; and that the Orders ought to be quaſhed.

The Reaſons upon which the Court has gone, in the Caſes cited, are not inconſiſtent with either the Letter or Intent of the Act of Parliament; becauſe there the Contract ſubſiſted, no Act having been done to determine it.

Mr. J. PAGE was of the ſame Opinion.

Mr. J. PROBYN was alſo of the ſame Opinion. The *Conſent* of the Maſter and Servant can't alter the expreſs Law.

The Caſe of *Iſlip* is not at all in Point. There, the Contract was not diſſolved before the End of the Year.

Mr. J. LEE.—This is a very clear Caſe. It appears, the *Servant went from his Service before* the Year was out, and that the *Maſter conſented to it:* Which is a plain *Determination of the Service within the Year.* No Fraud appears in the Caſe: The paying the Wages for the Time of the Servant's Abſence might be an Act of Benevolence in the Maſter.

The Caſe of *Iſlip* differs from this Caſe; becauſe there was *no* Determination of the Service within the Year.

Per Cur.

BOTH ORDERS QUASHED.

V. Poſt. No. 215. *Rex* v. *Inhabitants of Hanbury, Tr.* 26 *&* 27 *G.* 2 (*Thurſday* 28th *June* 1753.)

See alſo *Poſt.* No. 147. 215. S. P.

Vanes vide Poſt. No. 85. 152. 214. 216. 229. And note the *Diverſity* in thoſe Caſes, which ſeems to turn, on the Contract being, or not being, in contemplation of Law diſſolved.

Rex

Rex *v.* Inhabitants of Sarratt. No. 21.

Friday 28th *Nov.* 1735.

A Tenant muſt be *rated*, as well as *pay*, in order to gain a Settlement.

V. 2 *Stra.* 1023. S. C.

TWO Juſtices made an Order for the Removal of *Ezekiel Loſty* his Wife and Son from *Sarratt* to *Bovington*: But upon Appeal to the Seſſions, the Order was quaſhed.

The Caſe ſtated upon the Order of Seſſions was this.—*Ezekiel Loſty*, being ſettled at *Bovington*, marries, and goes to *Sarratt*, and there hired and lived in a Houſe of 7 *l.* 10*s. per Annum*; where a Poors Rate was made for the Relief of the Poor of *Sarratt*; which Rate was ſigned by one Churchwarden and three Pariſhioners, and afterwards by one Juſtice only. The *Landlord* of the Houſe, who never occupied it, was *charged* in this Rate: But the *Tenant paid* it. Another Rate was afterwards made, which was ſigned by the Pariſhioners; but not allowed by any Juſtice of Peace: And the Landlord was charged, but the Tenant paid as before. Both Payments were made *by the Tenant*, upon the *Demand* of the *Overſeers* of the Poor of *Sarratt*. The two Juſtices held the Man's Settlement to be at *Bovington*: But the Seſſions quaſhed their Order; ſuppoſing that he had acquired a Settlement at *Sarratt*.

On *Thurſday* the 20th of this Month of *November* 1735, a Motion was made, by Mr. *Coningſby*, to quaſh the Order of Seſſions; for that the Payment by the Tenant of this Poor Rate, which was *not charged upon him* but upon his *Landlord*, could not gain the Tenant a Settlement. So that the Queſtion was "Whether, if a "*Poors Rate* CHARGED *upon the Landlord, and* PAID *by the Tenant*, "this ſhall acquire a Settlement to the Tenant."

LORD HARDWICKE.—The *Charging* is the *principal* Act; as it infers Notice to the Pariſh: But *both* are neceſſary.

Mr. J. LEE.—*Both* the Charge upon the Tenant, and Payment by him, are neceſſary, to gain him a Settlement.

Mr. J. PAGE ſeemed alſo to think that the Tenant muſt be *charged*, as well as pay, in order to acquire a Settlement.

Rule to ſhew Cauſe.

On its coming on, this Day,

The Exception taken to the Order of Seſſions, being repeated, "that the Tenant was never *charged*;" whereas the Act of 3 & 4 *W. & M. c.* 11. *ſect.* 6. requires both a *Charge and Payment*.

SARRATT *and* BOVINGTON.

The Counſel for *Bovington* urged, That two Juſtices had before made an Order, on 24th *April* 1734, to remove theſe Paupers to *Bovington*; and *Bovington* had appealed to the Seſſions: And their *Appeal* was *allowed*, becauſe the Inhabitants of *Sarratt* did not produce the Order; and the Inhabitants of *Sarratt* were ordered to pay Coſts. Notwithſtanding which Order of Seſſions, afterwards, on the 18th *July* 1734, two Juſtices removed the Pauper to the *ſame* Place: Which they had no Power to do; being precluded by the *Allowance of the Appeal*.

LORD HARDWICKE.—This is no Objection to the preſent Order of Seſſions being quaſhed, upon the Merits. For though the * Rule is "that where the Seſſions, upon an Appeal, *confirm* an Order of two Juſtices, it is final upon the Pariſh charged as to *all* "Pariſhes whatſoever; but when they *diſcharge* the Order of two "Juſtices, it only binds as between the two contending Pariſhes;" yet the Order of Seſſions now before us is not within that Rule. For this Order only allows the Appeal: And an *Allowance of the Appeal* is *no quaſhing* of the Order of the two Juſtices. The Seſſions only declare that the Appeal was proper; and then give Coſts againſt the Pariſh of *Sarratt* for not producing the Order: But there is *no Judgment* of the Seſſions one Way or the other. Afterwards there is another Order made by two Juſtices; and an Appeal from it: And the Merits are, by Conſent, adjourned to a ſubſequent Seſſions.

* *Vide Poſt.* No. 135. *Rex.* v. *Inhabitants of Bentley* accord.

The Allowance of an Appeal is not conſidered as a Diſcharge of the original Order.

We muſt therefore take it upon the Caſe returned: And it ſeems to me to be a very plain Caſe. The Counſel for the Order of Seſſions give no Anſwer to the Exception taken to it upon the Merits.

The Act requires *both a Charge and Payment*: And here is only a Payment *without a Charge*.

I think the Charging is the principal Thing: For that is the Act of the Pariſh. It may be, that they would not charge him *for Fear* of making him a Pariſhioner. However they have charged the *Landlord*.

If the Hand that pays the Rate were to make any Difference, that would put it in the Power of the Officer who receives the Rate to charge the Pariſh, by receiving it from a Perſon never charged with it.

Per Cur.—

The ORDER *of* SESSIONS *was* QUASHED: And
The Original ORDER *of the two Juſtices* AFFIRMED.

Vide Poſt. No 148. *Rex* v. *Inhabitants of Painſwick*, where the Rate was—"Thomas Clifford, "*or* Tenant."

See alſo *Poſt.* No. 29, 30. 245. 252. Doug. 214. S. P.

Hilary

Hilary Term

9 Geo. 2. 1735.

Rex v. Inhabitants of Bramley. No. 22.

Thurſday 12th *Feb.* 1735.

TWO Juſtices removed *John Cloſe* with his Wife and Children from *Armley* to *Bramley*: Which Order of Removal was confirmed at the Seſſions.

Being *charged* with and making two quarterly *Payments*, to the *Land Tax* only, will gain a Settlement.

The Order of Seſſions ſpecially ſtates that after his Settlement at *Bramley* he removed with his ſaid Family, and inhabited and farmed Lands at *Armley* aforeſaid; for which he was charged *and paid* two Quarterly Payments to the LAND-Tax *only*. The Seſſions therefore confirmed the ſaid Order of Removal.

On *Tueſday* 18th of *November* 1735, a Motion was made, to quaſh theſe Orders. And to prove "that it was a good Settlement "in *Armley*," the Caſes between the Pariſhes of * *Oakhampton* and "*Kenton*, P. 7 G. 2. (where a Tide-waiter was holden to gain a Settlement by paying the Land-Tax;) and a Caſe between *Foſton* and *Dalbury* Pariſhes, or *Blood's* Caſe, *Comberb.* 410. (where *Holt* ſaid "that Payment of the Land-Tax had been holden a ſufficient No-"tice;") were cited: And a Rule was made to ſhew Cauſe.

V. *Seſſions Caſes*, Ed. 1750, Vol. 2. pa. 246, No. 167. S. C.

* *V. Ante*, No. 3.

The Counſel who ſhewed Cauſe againſt quaſhing the Orders argued, that though the Tenant did pay the Land-Tax to the Collectors; yet as the *Land*-Tax is always allowed or *repaid by the Landlord*, that Payment could gain no Settlement to the Tenant. And here he paid *only* two Quarters, *not* the whole Year's Tax: Whereas the Land-Tax is an *entire* Tax for the *whole* Year.

That Saying of *Holt's* in *Comberbach* 410. is only an *obiter* Saying: It was not the Point then in Queſtion.

In Anſwer to this, it was ſaid, The allowing the Money back again by the Landlord is no Objection: For, in the cited Caſe of the

BRAMLEY and ARMLEY.

Tide-waiter, (*The King* againſt *The Inhabitants of Oakhampton*) the Money was repaid to him by the Collector of the Cuſtoms.

LORD HARDWICKE.—The Act of 3 & 4 *W. & M. c.* 11. *ſect.* 6. does not require a Payment for a *whole* Year: The Payment of his *Share* is ſufficient; though it be not for the whole Year. It is all that the Statute requires: Which is "paying *his Share towards* "*the Publick Taxes or Levies* of the Pariſh." He might not perhaps reſide in the Pariſh during any one whole Year; but in *Part* only of two diſtinct Years.

The great Doubt has been "Whether the Legiſlature did not "mean PAROCHIAL Taxes." But this has been long gotten over; and the *Land*-Tax has been holden to be within the Act, from the *Notice* of Inhabitancy that ariſes by the Parties being *aſſeſſed and paying* it.

Per Cur.—

The RULE *muſt be made* ABSOLUTE;
And the ORDERS QUASHED.

BOTH ORDERS QUASHED.

See the Caſes referred to at the Bottom of pa. 6. determined agreeably to this Caſe.

No. 23. Rex *v.* Inhabitants of Mansfield.

The ſame Day.

An Order for the Removal of a *Mother* and her *Children* muſt contain an Adjudication of their laſt legal Settlement.

TWO Juſtices made an Order for the Removal of *Frances Swift* and *Frances* her Daughter about four Years old, *Elizabeth* her Daughter about two Years and a half old, and *Catharine* her Daughter about half a Year old, from *Brampton* in the County of *Derby* to *Mansfield* in the County of *Nottingham*; reciting that it appeared to the Juſtices, upon Oath of the ſaid *Frances Swift* taken in Writing, "That her Huſband *Godfrey Swift* was legally "ſettled in the Pariſh of *Mansfield* in the County of *Nottingham*." And the Seſſions, upon an Appeal, confirmed this Order.

A Motion was made on *Tueſday* the 3d of this Month, to quaſh theſe Orders; becauſe there is *no Adjudication* "that *Mansfield* was "the laſt legal Settlement of the *Children* or of their *Mother*." And a Rule was made to ſhew Cauſe.

The Counſel who now ſhewed Cauſe obſerved, that it *does not appear* that ſhe is a *Widow*: And it is to be preſumed that the Huſband

band is *alive*. And, if ſo, the Settlement of his Wife and Children muſt follow *his* Settlement. MANSFIELD and BRAMPTON.

In anſwer to this, it was ſaid, the Children are not ſaid to be the Children of *him*, but only of *her*.

Cur.—They are not removed as *his* Children; nor ſhe *as his Wife*.

The ORDERS *muſt be* QUASHED.

Eaſter Term

9 Geo. 2. 1736.

Rex *v.* Inhabitants of Preſton upon the Hill. No 24.

Wedneſday 26 *May* 1736.

TWO Juſtices made an Order for the Removal of *Mary*, *Martha* and *John*, the Children of *Thomas Harriſon* deceaſed, from the Townſhip of *Dareſbury* to *Preſton* upon the *Hill*: And upon Appeal to the Seſſions, they confirmed the ſaid Order, generally; not caring to ſtate any ſpecial Caſe in their Order.

A Motion was made on *Saturday* 7th *June* 1735, to quaſh theſe Orders: Which came before the Court upon a BILL OF EXCEPTIONS containing a ſpecial State of the Caſe, as follows—

A BILL *of Exceptions* doth not lie to the Court of *Quarter Seſſions*; even though they determine, that a *licenſed Schoolmaſter*, *Clerk of a Parochial Chapel*, doth not gain a Settlement. *V.* S. C. in Sir *John Strange* 1040. *Seſſions Caſes*, Ed. 1750, *Hardw.* 249; Vol. 2. pa. 254, No. 172. And *Caſ. Temp.*

Exceptions to the Judgment of the Court of Quarter-Seſſions, on the Confirmation of the above Order.

On the Evidence of all the Witneſſes, it *appeared* that *Thomas Harriſon*, the Father of the Children, about twenty-two Years ago was licenſed by the Ordinary of the Dioceſe of *Cheſter* to be *Schoolmaſter* of the Free Grammar-ſchool of *Dareſbury*, and at the ſame Time became *Clerk of the Parochial Chapel* of *Dareſbury*, and officiated in both Capacities from that Time to the Time of his Death,

which

PRESTON UPON THE HILL and DARESBURY

which happened in *April* last; and for fourteen or fifteen Years of the latter Part of the Time, *reſided in the ſaid Township of Dareſbury*; (though it did not appear in Evidence, *how* he was nominated or appointed, or that he was *licenſed* to the Clerk's Place:) And it appeared that the Children had gained no Settlement for themſelves. Whereupon the Court was of Opinion, "That the ſaid *Thomas* "*Harriſon gained* NO *Settlement thereby in Dareſbury*:" which the Inhabitants of *Preſton* on the *Hill* humbly EXCEPT TO, and pray they may be *received*. And accordingly the ſaid EXCEPTIONS *were* RECEIVED and ordered to be *filed* by the Court: And thereupon Sir *C. D.* Bart. and *J. M.* Eſq; *two of the ſaid Juſtices*, at the Requeſt of the Inhabitants of *Preſton* upon the *Hill*, SEALED *this Bill*, ſitting the Court aforeſaid, the 16th Day of *July* in the eighth Year of his preſent Majeſty's Reign, at *Nantwich* aforeſaid.

Upon this Motion, a Rule was made to ſhew Cauſe. And upon ſhewing Cauſe, the ſingle Queſtion was, "Whether a *Bill of* "*Exceptions* * would *lie*, in this Caſe, to the Court of Quarter-Seſ- "ſions." It was argued on *Monday* 17th *November* laſt: When Lord *Hardwicke* thought it a Matter of ſuch Conſequence, that he propoſed having it ſet down in the Paper for further Argument; which was accordingly done. And now (upon the ſecond Argument) the Court delivered their Opinion: In which Opinion, the Arguments of the Counſel at the Bar are ſo fully diſcuſſed, that I have choſen to omit them, to avoid being thought too tedious.

* *V. Ante*, No. 19.

LORD HARDWICKE.—This is a Caſe of great Conſequence: And there may be very great Inconveniencies on either Side.

It has been much wiſhed that a Bill of Exceptions would lie to the Juſtices at their Seſſions; becauſe otherwiſe it may ſometimes happen that they may determine in an arbitrary Manner, contrary to the Reſolutions of the Courts of Law: For if the Juſtices *will not* ſtate the Facts ſpecially (though requeſted to do ſo) when the Matter is *doubtful*, this is a very blameable Conduct in them; and it is to be wiſhed that it might be avoided.

On the other Hand, there may be very great Inconveniencies ariſing from the *Abuſe* of Bills of Exceptions: And this Matter of the Settlement of the Poor, which ought to be rendered cheap and ſpeedy, may by ſuch Means be rendered dilatory, expenſive and burthenſome.

I have

PRESTON UPON THE HILL and DARESBURY

I have heard that the Money ſpent about determining theſe Settlements would go a great Way towards the Maintenance of the Poor: And this Method would greatly *increaſe* the Expence, were it to be put in Practice in every Caſe where any Party thought fit to aſk and inſiſt upon it.

In order therefore to come to the proper Determination of this Point, we muſt conſider it on the Statute of *Weſtm.* 2. *c.* 31. and the Authorities and Reſolutions upon that Statute.

There has been no determined Caſe that warrants the Court to ſay that a Bill of Exceptions will lie in the preſent Caſe. If a Bill of Exceptions would lie, I do not ſee but this Bill is proper enough, as to the *Form* of it: The Evidence and the Opinion of the Court are ſtated; and theſe two Juſtices who have ſealed it have *agreed this to be the Evidence*; and the Exceptions are taken to the *Conſequence of Law ariſing from it.*

But notwithſtanding that, I am of Opinion that a Bill of Exceptions will *not lie* in the preſent Caſe. Conſider what the Words of the Statute of *Weſtm.* 2. *c.* 31. are, "*Cum aliquis* IMPLACITATUR "*coram aliquibus Juſticiariis, proponat Exceptionem, &c.*" And therefore the Obſervation that has been made at the Bar upon the Word "*Implacitatur*" is material, "that it muſt be *ſuch* a Proceeding as "in Conſtruction of Law is an IMPLEADING of the Party."

Lord *Coke*, in his 2 *Inſt.* 427, ſays, "This Act doth extend as "well to the Demandant or Plaintiff as to the Tenant or Defend-"ant, in all ACTIONS *real*, *perſonal* and *mixt*." He does not ſeem to have any Apprehenſion that it can be carried *further*: He ſays nothing of *criminal* or *ſummary* Proceedings. And though he has no negative Words, yet he ſeems to *intimate* that it lies in thoſe Caſes ONLY which he has mentioned.

There is no Caſe, ever ſince the Statute, that can ſupport a Determination "that it *does* lie in any other Caſes." Indeed there is an Expreſſion in *Lambard** (from *Marrow*) "that it does lie to Ju-"ſtices of Peace upon Indictments." But that is not known in Practice, nor authorized by the *judicial Reſolutions* of any Court.

* *V. Lib.* 4. *c.* 13.

In Sir *Hen. Vane's* Caſe, the Indictment was for *Treaſon*; but it is there reſolved "that a Bill of Exceptions does not lie in *any* crimi-"nal Caſes at all; but *only* in Actions between *Party and Party*." 1 *Levinz.* 68. and 1 *Siderf.* 84. S. C. where the Words are "that "the Statute of *W.* 2. *c.* 31. which gives a Bill of Exceptions, "does not extend to *any* Caſe where Priſoners are indicted at the "*King's* Suit: For it intends to remedy the over-ruling the Evidence,

PRESTON UPON THE HILL *and* DARESBURY

" in *civil* Pleas between Party and Party *only*." And *Kelynge* 15. S. C. reports the ſame Reſolution, " That it extends *only* to civil " Cauſes, and *not* to criminal;" and adds, " And the Intention ne- " ver was to give ſuch Perſons Liberty to put in Bills of Exception: " For then there would be no Trials of that Nature ever diſpatched " in any Time, if every frivolous Exception, which a Priſoner " would make, ſhould be drawn up in a Bill of Exceptions."

It has been ſaid, that it would be ſtrange that ſuch an Advantage ſhould be allowed to the Party in Caſe of a two-penny Property, and ſhould *not* be allowed in a Caſe where *Life* is concerned.

But there are *many* Caſes, where the ſame Advantages are *not* allowed in Caſes of Life, which *are* allowed in Caſes of Property only. For Inſtance, a Criminal, in a Caſe of Life, is not allowed Counſel, in the Courſe of his Trial, upon Matters of Fact: Neither can he have a Writ of Error without the Leave of the Crown. This ſounds very harſh: But the Courſe has been conſtantly ſo, in both theſe Points. And I dare ſay No-body had ever any Apprehenſion that a Bill of Exceptions would lie in a CAPITAL Caſe. If it would, we ſhould have it from every Priſoner at the *Old Bailey*: And very few Criminals would have failed to attempt it, for the Sake of the *Delay* with which it would be attended. However hard therefore this Courſe may ſeem, yet for the *Expedition of Juſtice*, and becauſe the Law eſteems the Judges to be of Counſel with the Priſoners, it has always been ſubmitted to.

I take it to be ſettled, " that *no* Bill of Exceptions will lie in a " *criminal* Caſe:" Though I do not know that there has ever been any direct judicial and abſolute Determination to that Purpoſe.

I therefore give *no Opinion* as to that Point; nor is it properly before us. Lord *Raymond* doubted of it in the Caſe of *Bunts*. I was of Counſel in that Caſe. It was in *Hil.* 2 *G.* 2. I was then Attorney General. It was an Information for a Libel; (for publiſhing one of *Miſt's Journals*.) A Bill of Exceptions was tendered. Lord *Raymond* ſeemed to declare an Opinion, " that a Bill of Exceptions " would *not* lie in a *criminal* Caſe." To avoid Difficulties, I conſented (as there had been other Convictions) to withdraw a Juror. Lord *Raymond* there mentioned the Caſes of Informations in the *Exchequer*. But they have always been taken as Suits for the King's Debts. In the *Exchequer* it has been allowed; and is the Practice in *Suits* by the Crown: But all thoſe Proceedings which have been inſiſted on at the Bar are taken to be the CIVIL *Suits* of the Crown. Informations there for Duties are ſo: And they are only for the ſin-

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gle Value. Then came the Practice of bringing *Devenerunt* for the Penalty; which was *originally a Civil Suit*, and was anciently called the King's *Action* of Trover. Formerly, the King recovered only the ſingle Value, though it was by Way of Information. Since that, ſubſequent Acts of Parliament have added the Forfeiture of the triple Value: But ſtill they have gone the old Way, and obſerved the ſame Rules. I do not know that they have been eſteemed criminal Proſecutions in any other Courts. However I give *no Opinion upon that Matter*: For it is *not ſimilar* to this Caſe. PARSTON UPON THE HILL and DARLINGTON

This is the Caſe of an Appeal to the Quarter Seſſions, and in a Point relating to *Police and Government*. Their Determination is *final*, as to Matters of *Fact*; though not as to Matters of Law.

I know no Inſtance where it has been imagined that a Bill of Exceptions will lie upon a SUMMARY *Proceeding*. If it will lie in *one* Caſe of a ſummary Proceeding, it will in *another*. And what would be the *Conſequence* of that? It would hold equally, in Caſes of *ſummary* CONVICTIONS; ſince ſummary *Convictions* are in the ſame Caſe as *this* ſummary Proceeding: And it would introduce into them much Delay and Expence; which are the two Evils meant to be avoided by the Inſtitution of ſummary Proceedings. If a Bill of Exceptions ſhould lie to the Seſſions, ſo it would alſo to the two Juſtices. But No-body ever imagined that it would lie to *their* Judgment.

This Caſe is a great deal *ſtronger* than the Caſe of *Convictions*; becauſe the Proceedings here are *not* of *Record*. And that is the Reaſon why they needed not to be inrolled in *Latin*, purſuant to 36 *Edw.* 3. *c.* 15. The general Rule was, "that where the Pro-"ceedings were of *Record*, there it was neceſſary that they ſhould "be in *Latin*: Where they were *not of Record*, there it was *not* "neceſſary to be in *Latin*."

This is merely an Exerciſe of Authority of the Juſtices by Way of *Order*, made on hearing Evidence of the Facts *vivâ voce*. A *Writ of Error not lying* is one of the ſtrongeſt Reaſons why a *Bill of Exceptions* ſhould *not* lie: For, the Bill of Exceptions cannot (any more than the Writ of Error) be made Uſe of in the *ſame* Court to which it is tendered. In the Caſe of Bills of Exceptions to Evidence on Trials at Bar, they do not come to be determined in the *ſame* Court. In the Caſe of *Truro*, where there was a Bill of Exceptions upon a Trial at Bar, a Writ of Error was brought, to reverſe the Judgment. And I take it that a Writ of Error is always in ſuch Caſe brought; and the Bill of Exceptions goes up with that.

PRESTON UPON THE HILL *and* DARESBURY

And this ariſes from the Words * of the Statute, which are very material;—"And if the King, upon Complaint made of the Act "of the Juſtices, cauſe the Record to come before him;" (that is, upon Complaint of the *Judgment* of the Juſtices:) And *all Writs of Error* do complain of the *Judgment* of the Juſtices. But a *Certiorari* does *not* complain of the Judgment of the Juſtices, in the leaſt. This ſtrikes me very ſtrongly; and ſhews that a Bill of Exceptions will *not* lie upon a *Certiorari*.

* *W.* 2. c. 31. *Et ſi forte ad querimoniam de facto Juſticiariorum Venire faciat Rex recordum coram eo.*

The Caſe of *Liverpool* in the Petty Bag, *Mich.* 11 *Ann. The Queen* againſt *The Corporation of Liverpool*, was between four and five hundred Years after the making the Statute of *W.* 2. in 13 *Edw.* 1. But that was a Proceeding quite at *Common Law*: And if it had come to an Iſſue, it muſt have been delivered into Court *per Manus Cancellarij*, who is a *Judge within the Meaning of the Statute*.

But the *Juſtices at Quarter Seſſions* are *not within the Deſcription or Intent of the Statute*. The Obſervation made by the Counſel for ſupporting the Orders, "That the Juſtices at Seſſions are Judges of "Fact as well as Law; that they are Jury as well as Judges; and "that it is in *their* Breaſt only, whether to *believe* or *diſbelieve* the "Evidence;" is very material. And who is to take upon himſelf to ſay *what* they believe of the Evidence, and *what* they do *not* believe?

In the common Caſe of Bills of Exception tendered to the Judges, the JURY *alone* are the proper Perſons who would be to conſider whether *they* believe the Evidence, or not: The *Judges* have nothing to do with the Belief of the Evidence; they are not to determine upon the *Credibility of the Evidence*, but upon the *Conſequence of Law ariſing from it*.

But here, ſuppoſe *ſix* of the Juſtices *believe* the Evidence, and *two* of them *do not believe it*, are the *two* to *conclude the ſix*, as to the Belief of the Fact? Where the Juſtices ſpecially ſtate the Fact, it is the Act of the *whole* Court; and it muſt be done by the Majority: But here *two* only out of the whole Number have ſealed the Bill of Exceptions.

Therefore upon the *Act of Parliament* itſelf, upon the *Determinations* on this Head, and upon the *Conſequence* that may follow, I am of Opinion that the Order be affirmed; *abſtracted* from any Regard to the Bill of Exceptions, which does *not*, I think, lie in the Caſe now before us.

Mr.

PRESTON UPON THE HILL and DARESBURY

Mr. J. PAGE.—This is quite a new Caſe: And I think it is *neither* within the *Words* or *Intent* of the Act.

Conſider what Miſchief may ariſe. If a Bill of Exceptions lies in all theſe Caſes of ſummary Juriſdiction, it is in a great Meaſure putting an End to the Acts of Parliament which give them. The Acts which give this Juriſdiction intended that Points of Settlement of poor Perſons ſhould be determined *as ſoon*, and with *as little Expence*, as poſſible. But in this Way of admitting Bills of Exceptions, the *Expence* would be as much as would be ſufficient to maintain the Poor; and the *Delay* would be ſo long and tedious as to make the Miſchief much greater than could ariſe from the other Conſtruction of not admitting them in theſe Caſes.

Neither do I know how the Bill of Exceptions can *come hither*. Here is *no Writ of Error:* And I do not know that a CERTIORARI will *remove* the Bill of Exceptions.

And what can this Court do in a Point of *Fact?* Suppoſe the Juſtices to *differ* from each other in their Belief of the Facts; how can *this* Court try *which* of them believe *right?* If we could meddle at all, it muſt be by directing an *Iſſue:* And then there might be a Bill of Exceptions *upon* a Bill of Exceptions.

A Bill of Exceptions can not be tried and determined by the *ſame* Court, to which it is tendered: Even upon a Bill of Exceptions at the Aſſizes, the Matter muſt be rectified by a *ſuperior* Court. So that I do not know where there would be an End of it. And the *Expence* attending it would be greater than the Matter in Queſtion would bear.

Was there ever a Writ of Error or a Bill of Exceptions brought upon a Determination of a Court of *Conſcience?* And yet there is an *Impleading*, though indeed not of Record. If a Bill of Exceptions ſhould lie *here*, it would *as well* lie to the Determinations of *Commiſſioners of Exciſe* and *other ſummary* Juriſdictions, as to *this*; And it would lie as well to the *two* Juſtices who make the original Order of Removal, as to the *Seſſions*.

I concur with my Lord's Opinion "that the Order ought to be "affirmed; and that *no* ſuch Bill of Exceptions will *lie*."

Mr. J. PROBYN.—This muſt be conſidered as a *Juriſdiction given by Act of Parliament*, and *not* a Proceeding at *Common Law*. Here are *no* Pleadings upon Record.

The Proceedings of the Juſtices are in a SUMMARY Way: They are Judges of the CREDIBILITY *of the Evidence*, as well as Judges of the Law which ariſes upon that Evidence. Therefore this Caſe

PRESTON UPON THE HILL and DARESBURY

differs from those Cases where a Bill of Exceptions is tendered to those Courts who are Judges ONLY *of the Law which arises upon the Evidence.* Upon Trials, the Jury ought not to have any Evidence laid before them, but what is proper: But here the Justices themselves are Judges of the Evidence.

Here, the *Foundation* of a Bill of Exceptions is taken away; because we cannot say *what they believed concerning the Fact. Some* might believe, and *some disbelieve* the Witness: So that the same Judgment would be right in some, and wrong in others. *We* can only judge upon the *Law*, admitting the Fact to be one Way or the Other.

IF a Bill of Exceptions will lie to *one* summary Jurisdiction, it will likewise lie to *another*. These summary Jurisdictions are given to Gentlemen in the *Neighbourhood*, who are supposed capable of *knowing* the *Facts* and the *Credibility of the Witnesses*. Their Determination is certainly *final* as to the *Facts*: And I do not know whether it was not *meant* to be so upon the *Law* too; (though indeed the Jurisdiction of the superior Courts can not legally be taken away but by express Words.)

And *no* Bill of Exceptions having *ever been* brought in a Case of this Kind, is a strong Argument, with me, to believe that it has always hitherto been thought, "that by Law it *could not* be done."

I will not go over the Reasons that my Lord has already given, least I should lessen the Weight of them by my repeating them. But I will say, in general, that since this Method would render the Determination of Settlements *more expensive*, as well as *more tedious*; and since the *other Construction* has been *always submitted to*, I concur with the Opinion "that the Orders be confirmed."

Mr. J. LEE.—This is a Case which is attended with very odd Circumstances. It is a Case, as to *material* Exceptions, the *weakest* that can arise upon the Act of Parliament; because it is an Exception to the Judgment of the Justices upon the *whole Case*: If it had been to any *particular* Point, it had been stronger.

It is certain, that the Intention of the Statute of *W. 2. c.* 31. is, that the Bill of Exceptions shall be allowed, to the End that the Matter may be stated *in Writing*, when it *does* NOT *appear upon the Roll.* But *when the* WHOLE *appears upon the Record*, then there is *no Occasion* for the Bill of Exceptions; because the *whole* Matter will appear to the *superior* Court.

This is an Exception for NOT *having stated the Facts*: And if the real Truth of the Case be stated upon the Bill of Exceptions, I should not

not have been of the ſame Opinion with the Seſſions, upon the Facts.

PRESTON UPON THE HILL and DARESBURY

But we are to give our Opinion "Whether a *Bill of Exceptions* "*lies to the Juſtices at their Seſſions*, or not." And I am of Opinion "that it does *not* lie."

There is a Caſe in 2 *Lev.* 237, 238, in which it was argued that there are two Ways of taking Advantage of a Bill of Exceptions; one, by Writ of Error; the other, in Arreſt of Judgment. There is no Determination indeed upon that Point: Though the Court ſaid "that the Precedents cited were good Proofs that it might be "uſed upon a Writ of Error, but did not prove that it could not "be made Uſe of by Motion in Arreſt of Judgment." However, they gave no poſitive Opinion as to this Point.

I take it to be *now* ſettled, and that it is the eſtabliſhed Method, "that it *muſt* be by *Writ of Error*." In the Caſe of *Truro*, there was a Writ of Error brought; and the Bill of Exceptions went up with it: In the Caſe of Lord *Barrington*, there was a Bill of Exceptions before the Judge of *Niſi Prius*; and a Writ of Error was brought afterwards to the Houſe of Peers.

The true Method therefore I take to be, that *there muſt be a Writ of Error, upon the Exceptions* ſpecified in the Bill: For, the Writ of Error is founded on that. But there can be no ſuch Thing in ſummary Proceedings *before Juſtices*. And I do not know any Authority that the Court have, to enquire concerning a Bill of Exceptions, *unleſs* it comes to them by a Writ of Error from the Court who have over-ruled the Exceptions.

Lord *Coke** ſpecifies "*Actions real, perſonal and mixt*; and mentions no other. Beſides, A Bill of Exceptions tendered to the Seſſions upon the Merits of the Caſe is inconſiſtent with the Statute, which makes their Determination final as to the Merits. It ſeems to me to be a Contrivance, by a Method in the Nature of a Writ of Error, to have an *Appeal* from their Determination.

* 2 *Inſt.* 427.

I think ſuch a Bill of Exceptions can not be maintained. But yet I am not willing to *affirm* an Order which I think is a *wrong* one, if the Fact really be as it is ſtated in the Bill of Exceptions.

LORD HARDWICKE.—There is that Caſe of *Enfield* v. *Hills*, *in* 2 *Lev.* 236. which my Brother *Lee* has mentioned*. But it has been long ago ſettled, "that a Bill of Exceptions *can not* be "taken Advantage of by Way of Motion in the *ſame* Court."

* And v. Sir T. *Jones* 116. S. C. but without any Hint of the Opinion of the Court upon it.

I remember a Caſe from the Houſe of Lords in *Ireland*, where it was ſo determined. The Court of *Exchequer* in *Ireland*, (out of which

PRESTON UPON THE HILL. and DARESBURY

which Court the Record of *Niſi Prius* went,) had entered into the Matter, upon a Bill of Exceptions tendered to and ſealed by the Judge of *Niſi Prius*. The Lords held it to be an *irregular* Proceeding, and that it *ought not* to have been taken Notice of by the *ſame* Court: And ſo the Judges held, who were then preſent. And the Judgment of the Court of *Exchequer* in *Ireland* was therefore reverſed.

It is to be wiſhed, if the Fact be in Truth ſo as it is ſtated in the Bill of Exceptions, that ſome Method could be thought of to ſet it right. But that can not be done without *Conſent*: We can not *judicially* take Notice "that this *was* the Fact."

But perhaps we may hear of this Caſe again: It may be cited to us as an Authority for eſtabliſhing the *Opinion* which the Seſſions have here determined upon*. To prevent which, I think we ſhould ſpecify the particular Reaſon of our Determination in our preſent Rule. Therefore let the Order be affirmed, with this Reaſon inſerted in the Rule.——"*The Court being of Opinion that a Bill of "Exceptions doth* NOT *lie in this Caſe.*"

* See the next Caſe but one, where this *Opinion* is made a Ground of Objection.

Per Cur.—

RULE ACCORDINGLY: *viz.*

Wedneſday next after one Month from the Feaſt Day of *Eaſter*, in the ninth Year of King *George* the Second.

Co. Pal. of Cheſter. } UPON mature Deliberation had here in *The King* againſt Court, it is ordered that the Order of Seſ-*The Inhabitants of* ſions in this Cauſe be affirmed; the Court be-*Preſton on the Hill.* ing of Opinion "that no Bill of Exceptions "lies in this Caſe."

On the Motion of Mr. *Wilbraham*.

Trinity

Trinity Term

10 Geo. 2. 1736.

Rex *v.* Inhabitants of Burnham.

No. 25.

Thurſday 1ſt *July* 1736.

HIRING *for a Year* is neceſſary to gain a Settlement.

UPON *Friday* the 4th of *June* laſt, a Motion was made to quaſh an Order of Seſſions which quaſhed an Order of two Juſtices, removing *James Rogers*, *Hannah* his Wife and *Hannah* their Daughter from *Burnham* to *Huntſpill*.

The ſpecial Caſe ſtated was, That this *James Rogers* ſerved ſix Years as an Apprentice to *Robert Deane* in *Huntſpill*; and after the Expiration of his Apprenticeſhip, about a Week before *Chriſtmas* 1722, hired himſelf as a Servant to one *Giles Durſtan* of *Burnham*, *to ſerve him for* HALF *a Year* from that Time till the *Midſummer* following, for the Wages of 3*l*; and *ſerved him accordingly*; and received his ſaid Wages: And after the Expiration of that Term, *continued in his Maſter's Service about a Week*; and in that Time *covenanted to ſerve him to the Lady-day following* at 5*l*; and *accordingly ſerved him till that Time*, and received the ſaid Wages; being all this Time, unmarried and without Child or Children. And it appearing that *Hannah* the Daughter was a Baſtard born out of lawful Matrimony, and *was not* born in the ſaid Pariſh of *Huntſpill*, the Seſſions adjudged *Burnham* to be the Place of his laſt legal Settlement, *by Virtue of ſuch Hiring and Service* with *Giles Durſtan*: And therefore they quaſhed the original Order.

The Exception taken to this Order of Seſſions was, "That there "was *no* HIRING *for a Year*."

Upon ſhewing Cauſe, it was ſaid that *Hannah* the Daughter was a Baſtard, and was NOT *born in Huntſpill*; and therefore the Order of Seſſions is right as to that. The Counſel for *Huntſpill* admitted that the Order of Seſſions was wrong, as to the Man and his Wife: Yet

BURNHAM *and* HUNTSPILL.

Yet they ſaid it ought to be confirmed, as to the Child. And I took it that a Rule was drawn up accordingly: But I find *no Rule at all* entered in the Rule-Book.

No. 26.

Rex *v.* Inhabitants of Heptonſtall.

Saturday 3d *July* 1736.

ON *Thurſday* 27th of *May* laſt, a Motion was made to quaſh an Order of Seſſions diſcharging an Order of two Juſtices made for the Removal of *Daniel Helliwell* with *Martha* his Wife and ſeven Children from *Heptonſtall* to *Errenden*, (both in the Weſt Riding of *Yorkſhire*.)

Order made at an *adjourned* Seſſions quaſhed, for not ſhewing when the *original* Seſſions were holden. *Poſt.* No. 32. 195. 19 *Viner*, 356. S. P.

They diſcharged the Order of the two Juſtices, on Proof (as they ſtated in their Order) of the Facts following; *viz. Helliwell* went by *Certificate* from *Errenden* to *Wadſworth*; then was *licenſed to be Clerk of a parochial Chapel at Heptonſtall*; and reſided a Month at *Wadſworth* (*Wadſworth*, *Errenden* and *Heptonſtall* being different Towns in the ſame Chapelry;) then removed to *Heptonſtall*, and *inhabited there five Months*; during all which Time, he *executed the Office of Clerk of the Chapel* there.

* Objection that a *Licence* from the *Biſhop*, to be Clerk of a *Parochial Chapel*, will not gain a Settlement, without a Choice by the *Pariſhioners*. *Vide Ante*, No. 24.

* The Objection at firſt made to this Order was, That nothing appears to give the Pauper a Title to a Settlement, but a LICENCE to be Clerk of a parochial Chapel: Whereas a *Licence from the Biſhop* will not gain a Settlement, without a CHOICE *by the* PARISHIONERS.

But, now, upon ſhewing Cauſe, another Objection was made to this Seſſions-Order; which was, That in the Caption of it, the Seſſions are ſaid to be holden on ſuch a Day *by Adjournment*: But it does *not* appear *when the* ORIGINAL *Seſſions were holden*.

The Counſel who was to ſhew Cauſe againſt quaſhing the Order of Seſſions (Mr. *Strange*) ſaid, He could have undertaken to have ſupported it upon the *ſpecial* Matter.

Per Cur.—This is a *fatal* Exception: The Order muſt be quaſhed.

The Counſel for the Order of Seſſions then made two Objections to the *Certiorari*: Both which were over-ruled, as being quite immaterial.

Mr. *Strange* then objected to the original Order of the two Juſtices. (1ſt,) It does not ſet out the *Ages* of the Children. (2dly,)

(2dly,) Theſe were *certificate* Perſons: And it is not ſaid, that they were *actually become* chargeable.

HEPTONSTALL *and* ERRENDEN.

To which the Counſel for quaſhing the Order of Seſſions (Mr. *Abney* and Mr. *Deniſon*) anſwered, that the Certificate was directed to *another Townſhip, viz.* to *Wadſworth*, and was *left there*: So that he did not come *to Heptonſtall* by Certificate from *Errenden*. And as to the other Objection—*Errenden* is ſaid to be the Place of *their* laſt legal Settlement; and it is therefore well enough.

Cur.—That goes to all; and it is an Anſwer. Where a Place is adjudged only to be the laſt legal Settlement *of the* FATHER, and the Children are only ſent thither in Conſequence of its being their Father's Settlement, the Ages of the Children *muſt* be ſet out; becauſe they may perhaps have gained a Settlement for themſelves, ſince: But it is not neceſſary to ſet out the Ages of the Children, where the Juſtices adjudge the Place to which they remove them to be the Place of *their own* laſt legal Settlement.

The *Ages* of Children muſt be ſet out, or their Place of Settlement expreſsly adjudged. *Poſt.* No. 29. 45. 57. 63. 1. P.

The Rule muſt be made abſolute to quaſh the Order of Seſſions.

The ORDER *of* SESSIONS QUASHED; *Original* ORDER AFFIRMED.

Michaelmas Term

10 Geo. 2. 1736.

No. 27.

Monday 25th *Oct.* 1736.

Rex *v.* Inhabitants of Worth.

Being *charged* with and *paying* the LAND-TAX, for a Tenement under the Value of 30*l.* gains a Settlement.

A Motion was made on the laſt Day of *Trinity* Term laſt, to quaſh an Order of Seſſions confirming an Order of two Juſtices for the Removal of *Mary Simmons* and her four Children from *Merſtham* to *Worth*.

The Caſe ſtated in the Order of Seſſions is, That one *Francis Simmons* with his wife and Children came into the Pariſh of *Merſtham* in *Surry*, by Certificate dated in *February* 1709. That about *Michaelmas* 1726, *Mary Simmons*, the Daughter of the ſaid *Francis*, intermarried with one *Robert Scott*, a *Scotchman* not having gained any Settlement in *England*. That one *Mary Harbour*, a Widow and Grandmother of the ſaid *Mary*, had purchaſed three ſeparate Tenements of one *Savage* in *Merſtham* aforeſaid; and being ſo poſſeſſed, in Conſideration of a Marriage then lately had between the ſaid *Scott* and the ſaid *Mary Simmons*, by her Deed of Feoffment dated 22 *Oct.* 1726, did bargain, ſell, alien, enfeoff, remiſe, releaſe and confirm one of the ſaid Tenements and its Appurtenances in *Merſtham* aforeſaid, to hold to the ſaid *Scott* and his Wife and their Aſſigns for the Term of their natural Lives; and from and after their Death, then to the Uſe of the Heirs of the Body of the ſaid *Robert* on the Body of the ſaid *Mary*; and for Want of ſuch Iſſue, then to the Uſe of the right Heirs of the ſaid *Mary* for ever, and to no other Uſe or Behoof whatever. That the ſaid *Robert* and *Mary entered into and dwelt in the ſaid Tenement*, ſoon after the Date of the ſaid Deed of Feoffment; and *continued there* till about *Michaelmas* 1735: In which ſaid Tenement they had four Children born, all under ſeven Years of Age; and have ſince let the ſaid Tenement to one *John Morris* for 40*s.* a Year. That the ſaid Tenement was at the Time of the

the Execution of the ſaid Deed, and ſtill is, UNDER *the Value of* 30*l.* And that the ſaid *Robert Scott* hath been CHARGED *to and* PAID *the* LAND-*Tax* for the ſaid Tenement, ever ſince the Date of the ſaid Deed of Feoffment.

WORTH *and* MERSTHAM.

Upon this Caſe, the Seſſions diſmiſs the Appeal; and confirm the Order of the two Juſtices.

The Exception taken to this Order of Seſſions was, That *Robert Scott* had gained a good Settlement in *Merſtham*, by being *charged to and paying the Land-Tax* there, whilſt he lived upon his own; though it was under 30 *l.* in Value, and conveyed to him ſince the making of 9 *Geo.* 1. *c.* 7. *ſect.* 5.

A Rule was made to ſhew Cauſe why both theſe Orders ſhould not be quaſhed: Which was now made abſolute, *without Defence.*

Vide Poſt. No. 138. S. P.

Rex *v.* Inhabitants of St. Nicholas in Ipſwich.

No. 28.

Thurſday, 23d *Nov.* 1736.

A Motion was made on *Friday* the 6th of *February* laſt, to quaſh an Order of Seſſions which diſcharged an Order of two Juſtices made for the Removal of *James Blyth* and *Margaret* his Wife, and *Thomas*, *James* and *Mary* their Children, from the Pariſh of St. *Nicholas* within the Borough of *Ipſwich*, to St. *Peter's* in *Ipſwich*.

An Indenture for *leſs* than *ſeven* Years is not VOID, but only VOIDABLE by the Parties. *V.* 2 Sir *J. Strange* 1066. And *Seſſions Caſes*, Ed. 1750, Vol. 2. pa. 231, No. 162. S. C.

The Caſe ſtated by the Seſſions was this—*James Blyth* being under ſixteen Years of Age and unmarried, was bound *Apprentice* to *J. B.* of St. *Peter's* in *Ipſwich* aforeſaid, Cordwainer, by Indenture and with the Conſent of his Father, for the Term of FOUR Years *only*; and dwelt with and ſerved his Maſter in St. *Peter's*, only the ſaid four Years. Whereupon the Seſſions being of Opinion "that "the ſaid Binding and Inhabiting purſuant thereto did *not* intitle "the Pauper to a Settlement in St. *Peter's*; *becauſe* he was not "bound for *ſeven* Years according to the Statute in that Caſe;" They therefore diſcharge the Order of the two Juſtices.

To this Order of Seſſions it was objected, That the Seſſions had miſtaken the Law: For by the Statute of 3 & 4 *W.* & *M. c.* 11. *ſect.* 18. a Binding for four Years, or *any* other Time UNDER ſeven Years, together with an *Inhabitancy for forty Days*, would gain a Settlement. For, the Words of that Section are only theſe—"If "any Perſon ſhall be *bound an Apprentice* by Indenture, *and inha-* "*bit* in any Town or Pariſh, *ſuch Binding* and Inhabitation ſhall be "adjudged a good Settlement." And the Caſe of St. *Bride's* and

St. Nicholas and St. Peter's in Ipswich.

St. *Saviour's*, in 2 *Salk.* 533. was only a Binding for four Years. A Rule was made to ſhew Cauſe why it ſhould not be quaſhed.

Upon arguing this Caſe on the laſt Day of the ſame *Hilary* Term, the Counſel for St. *Peter's*, in Support of the Order of Seſſions, inſiſted that this Indenture was VOID *to all Intents and Purpoſes*, by 5 *Eliz. c.* 4. *ſect.* 41. whereby it is enacted, "That all Indentures "for taking any Apprentices, *otherwiſe* to be made *than by that Sta-* "*tute is appointed*, ſhall be clearly *void* in the Law, to *all* Intents "and Purpoſes." And it is appointed by the 26th Section of the ſame Statute, "that Perſons dwelling in Cities and Towns Corpo- "rate ſhall take Apprentices for SEVEN Years *at the leaſt*."

Whereas this Maſter, dwelling in a Town Corporate, has taken this Apprentice only for FOUR Years.

They ſaid it was as much abſolutely void as if the Indenture had been *unſtampt:* In which Caſe it would be as no Indenture of Binding at all; becauſe it was not ſtampt agreeable to 8 *Ann. ſect.* 39. To prove this, they cited a Caſe in *Paſch.* 4 *G.* 2. 1731, between the Pariſhes of *Cuerden* and *Leyland:* (*v.* 2 *Strange* 903, and *Seſſions Caſes*, Ed. 1760, Vol. 2, pa. 167, No. 134.)

ADJOURNED.

Upon *Saturday* 3d *July* 1736, the Counſel for the Pariſh of St. *Nicholas* moved to make the Rule abſolute. But Lord *Hardwicke* intimating ſome Doubt whether this Caſe might not come within the cited Caſe of *Cuerden* and *Leyland*; it was again

ADJOURNED.

On the *Tueſday* following, this Caſe was again argued.

LORD HARDWICKE obſerved, that as this is a very extenſive Queſtion, it would be proper to conſider maturely the Act of 5 *Eliz.* For, if the Court ſhould make this *ſtrict* Conſtruction of the 41ſt Section, "That EVERY *Indenture of* Apprenticeſhip ſhall "be ABSOLUTELY *void* where *every Circumſtance* of the Directions "of that Act is not exactly purſued," he was apprehenſive that ſuch Conſtruction would be attended with very great Inconvenience, more than can eaſily be foreſeen. And it might be doubted, he ſaid, upon the 26th Section, whether the Words "*ſhall and may*," there uſed, ſhould be taken *ſo ſtrong* as to make *all other* Bindings *void:* Or, whether that and the next following Clauſes were only inſerted for the *Benefit of Corporations*.

It was once more ADJOURNED.

Upon

Upon its being now again argued, the Court gave their Opinions at large. St. Nicholas and St. Peter's, in Ipswich.

Lord Hardwicke ſaid—This is a Caſe of very great Conſequence, and of a very extenſive Nature: If this be a *valid* Objection, "That the *Indenture is* void," it is very ſurpriſing that it has not been taken before now. But I do not find that it has been ever taken, with Relation to a Settlement.

The Exception to the preſent Order of Seſſions is, that by the ſpecial State of the Caſe it appears that the Pauper was bound in the Pariſh of St. *Peter* within the Burough of *Ipſwich*, for the Term of four Years *only:* And upon *that* Foot, (for all the *other* Qualifications are taken for granted) the Seſſions have taken it up, and held it to be a *bad* Settlement. The Queſtion is, "Whether an Appren-"tice bound for less than seven Years can gain a Settlement."

I am of Opinion, that he *may* gain a Settlement under ſuch a Binding; and therefore that this original Order of the *two Juſtices* is *good*, and the Order of *Seſſions* conſequently *bad*.

The Words of 5 *Eliz. c.* 4. are very ſtrong. In *ſect.* 26. they are theſe—"That every Perſon being an Houſeholder and twenty-"four Years old at the leaſt, dwelling or inhabiting or which ſhall "dwell and inhabit in any City or Town Corporate, and uſing and "exerciſing any Art, Myſtery or manual Occupation there, *ſhall* "*and may*, during the Time that he ſhall ſo dwell or inhabit in any "ſuch City or Town Corporate and uſe or exerciſe any ſuch Art or "Myſtery or manual Occupation, *have and retain* the Son of any "Freeman not occupying Huſbandry or being a Labourer and inha-"biting in the ſame or in any other City or Town that now is or "hereafter ſhall be and continue incorporate, *to ſerve and be bound* "*as an Apprentice* after the Cuſtom and Order of the City of *Lon-*"*don, for* seven *Years at the* least; ſo as the Term and Years "of ſuch Apprenticeſhip do not expire or determine afore ſuch Ap-"prentice ſhall be of the Age of twenty-four Years at the leaſt."

Between this 26th Section and the 41ſt, there are a great many Regulations concerning the Perſons who are to *take* an Apprentice, and who are to be *bound* Apprentices.

Then comes Section 41ſt, which ſays, "That *all Indentures*, "Covenants, Promiſes and Bargains of or for the having taking or "keeping of any Apprentice, otherwise hereafter to be made or "taken than *is by this Statute limited ordained and appointed*, ſhall "be clearly void in the Law *to* all *Intents and Purpoſes*; and that "every Perſon that ſhall from henceforth take or newly retain any

"Apprentice

St. Nicholas and St. Peter's in Ipswich.

"Apprentice contrary to the Tenor and true Meaning of this Act, "shall forfeit and loſe for every Apprentice ſo by him taken, the "Sum of ten Pounds."

The Queſtion therefore turns upon this 41ſt Section taken together with the 26th. And it is to be inquired—

1ſt, Whether this 41ſt Section has a *Relation* to and runs over *all the ſeveral Clauſes* of the Act, *ſo as to reach the 26th Section.*

2dly, If it does, then whether it makes ſuch an Indenture *void*; or whether it makes it VOIDABLE *only*.

Firſt, I do not ſee but that it *does* run over the ſeveral Clauſes of the Act, *ſo as to reach the 26th Clauſe.*

Secondly, But I am of Opinion that it does *not* make this Indenture VOID: but *only* VOIDABLE, if the Parties themſelves *think fit* to take Advantage of it.

There are many Caſes, where though according to the ſtrict Words a Thing is made void, yet ſuch Thing is held not to be *abſolutely* void, but *only* VOIDABLE. One Inſtance of this is the Statute of *Weſtm.* 2. *c.* 1. relating to Fines levied by Tenant in Tail. The Act ſays that the Fine ſhall be "*ipſo Jure nullus*," (as ſtrong an Expreſſion as can be thought of:) And yet it has been held that it ſhall NOT *be* ABSOLUTELY *void* againſt the Iſſue in Tail; but *only* work a Diſcontinuance and put him to his *Formedon*, if he thinks fit to take Advantage of it.

In *Hob.* 166, in the Caſe of *Winchcomb* v. *Biſhop of Wincheſter and Pulleſton*, ſeveral Caſes of this Kind are collected: One of which is very material; *viz.* That a ſheriff's Bond againſt the Statute of 23 *H.* 6. is made utterly void; and yet "*Non eſt factum*" can not be pleaded to it. *That*, is the Caſe of a Bond: *This* of an Indenture.

Here is an Indenture between the Maſter and his Apprentice to ſerve for four Years: And the Apprentice has *actually ſerved* four Years. *It has had its Effect between the Parties:* Neither of *them* has thought fit to take Advantage of any Defect in it. The *Pariſh* has had the *Benefit* of this Apprentice's Service, (as far as the Service of an Apprentice *is* a Benefit to a Pariſh:) And yet the *Pariſhioners* would make it void. This would, I think, be extremely hard.

I will mention a Caſe which was not mentioned at the Bar: It is in 1 *Salk.* 68. *Barber* v. *Dennis:* But is more fully ſtated in 6 *Mod.* pa. 69. The Widow of a Waterman, who (as was ſaid) by the Uſage of Waterman's-Hall may take an Apprentice, had her Apprentice taken from her and put on board a Queen's Ship, where he

St. Nicholas and St. Peter's in Ipswich.

he earned two Tickets, which came to the Defendant's Hands; and for which, the Miſtreſs brought Trover. It was agreed, the Action would well lie, if the Apprentice were a *legal* Apprentice: For, his Poſſeſſion would be that of his Maſter, and whatever he earns ſhall go to his Maſter. But it was objected, "that this ſuppoſed Appren-"tice was *no legal* Apprentice, if the Indentures be not *enrolled pur-"ſuant to the Act of* 5 *Eliz.*: And *if he were not a* LEGAL *Appren-"tice*, the Plaintiff had no Title." But Lord Chief Juſtice *Holt* ſaid, "He would underſtand him an Apprentice or Servant *de facto*; "and *that* would ſuffice againſt them being Wrong-Doers." In the Report in *Salkeld*, the Word "*Servant*" is not mentioned. (And indeed an Action could not have been brought for a *Servant's* Wages, either on Board, or elſewhere: For a Maſter can not bring an Action for the Wages of his *Servant*; tho' for the Wages of an *Apprentice* he may; becauſe the *Time* of an *Apprentice* is conſidered as the Time of the *Maſter*; and what is earned by the Apprentice is conſidered as *belonging* to the Maſter.) Now *if* the Conſtruction of this Act had been ſo *very ſtrict* as is contended for by the Counſel who have argued in Behalf of this Order of Seſſions, ſuch a Conſtruction *would have avoided* the Apprenticeſhip, to the Effect then in Queſtion; and the Miſtreſs could *never have maintained* that Action.

Therefore I am of Opinion that this Indenture is *not* void, ſo as to be liable to be taken Advantage of by a third Perſon; but VOIDABLE *only*, at the *Election* of the Parties, *if they think fit* to take Advantage of it. And it would be extremely hard that all theſe Indentures ſhould be abſolutely void for Want of any *ſingle* Qualification required by this Act.

If the TIME *of Service* was the *only* Circumſtance liable to this Objection, I ſhould not think it of ſo much Conſequence; (for, I believe, there are *not many* Bindings for a *leſs* Term than *ſeven* Years:) But there are a vaſt many *other* Qualifications that are mentioned in the Act of 5 *Eliz.* which are all liable to the ſame Objection. And *if a Binding for ſeven Years be neceſſary*, it follows, that if *any one* of theſe Qualifications are *wanting*, the Indenture will be in the very *ſame* Caſe as if this Circumſtance of Time was wanting: And *if ſo*, I queſtion whether any one Settlement under an Indenture of Apprenticeſhip has been gained for fifty years paſt. Therefore upon *this* Argument, I am of Opinion that the Settlement is good; though the Binding was only for four Years.

But then there comes the Statute of 3 & 4 *W.* & *M.* *c.* 11. *ſ.* 8. which enacts, "That if any Perſon ſhall be *bound an Apprentice by*

"*Indenture*,

St. Nicholas and St. Peter's, in Ipswich.

"*Indenture*, AND inhabit in any Town or Parish, *such Binding and* "*Inhabitation* shall be adjudged a good Settlement, though no such "Notice in Writing be delivered and published as aforesaid:" from whence it is inferred, that if there be *no Binding by* 5 *Eliz.* then there is *no Settlement by* 3 & 4 *W. & M.* But this Act of King *William* and Queen *Mary* takes it up *as it finds it*; and only intends "that an Apprentice should not be obliged to give Notice in Wri-"ting." And the Construction of both Statutes must be the *same*.

And though the NOTION *of Settlaments of poor Persons* had *not obtained* at the Time when the Act of 5 *Eliz.* was made, as it has done since; yet it was a Mistake of one of the Counsel, to say, "that the 33 *Eliz.* was the *first* Act *relating* to the Settlement of "poor Persons." For, 27 *H.* 8. *c.* 25. (which is printed in *Rastall's* Edition of the *Statutes at Large*,) establishes a Settlement for such as had been born or dwelt three Years in any Parish: And there was a subsequent Statute made in *Ed.* 6th Time. [*v.* 1 *Edw.* 6. *c.* 3.] But indeed the *present* Notions of Settlements have taken their Rise from 13 & 14 *C.* 2. *c.* 12.

The principal Objection to this Binding for four Years only, was founded upon the Determination of the Court in the Case of *Cuerden* and *Leyland*; where the Indenture was holden to be *absolutely void*, for want of being stampt. And how to distinguish *that* Case from *this*, is the Difficulty: And, *if* there had been no other Words in the Act of 8 *Ann. c.* 9. than there are in this, the Difficulty had been great enough. But that Case *materially differs* from the present: For, in *that* Case, there were not only the Words—"that all "Indentures whereupon the Duty was unpaid, and all unstamped "Indentures, should be *void*;" but the Act of Parliament went on further, and added *these* Words—"*and* NOT AVAILABLE IN ANY "COURT OR PLACE, or to any Purpose whatsoever." [*v.* 8 *Ann. c.* 9. *sect.* 39.] And there is a subsequent Clause [*v. sect.* 43.] which further enacts "that no Indenture required by that Act to "be stamped, *shall be* GIVEN OR ADMITTED IN EVIDENCE in "any Suit to be brought by any of the Parties thereunto, unless such "Party on whose Behalf it shall be given or admitted in Evidence, "do first make Oath that the whole Sum really given with the Ap-"prentice, or contracted for, was truly inserted."

So that in that Case it was *superadded*; (1st,) That such Indenture should *not be available in any Court or Place*: (2dly,) That it should *not be given or admitted in Evidence*:—And yet the Order made in that

that Caſe was grounded *upon* the Indenture which was not ſtampt, nor was the Duty paid. Therefore the Juſtices admitted a Matter in Evidence which they *ought* NOT *to have done*. And it has been holden "that if the Juſtices admit Evidence which they ought not "to admit, it is a ſufficient Reaſon for quaſhing their Orders." And therefore that Caſe of *Cuerden* and *Leyland* was *properly* determined; becauſe the Juſtices *ſhould not have admitted the Evidence* upon which they grounded their Order.

St. Nicholas *and* St. Peter's in Ipswich.

Therefore I am of Opinion that the preſent Indenture is *not abſolutely void*, but *only* VOIDABLE (at moſt.) Conſequently, the Order of Seſſions is bad, and ought to be quaſhed; and the firſt Order, affirmed.

THE OTHER THREE JUDGES concurred in Opinion, "that "this Indenture was *not* abſolutely VOID, but *only* VOIDABLE;" and even that, at the Election of the *Parties* only, *not by a third Perſon*: For, that this Indenture could only be avoided by the Maſter or Servant, who were the *Parties to it*; but NOT *by the* PARISH, who have had the *Benefit* of the Service of this Apprentice.

They added ſome Inſtances to prove that where the ſtrict Words of Statutes ſeem to make Things *Nullities*, yet they muſt be regularly *avoided*, before they ſhall be abſolutely conſidered as ſuch: Particularly, where a previous *Sentence* of Excommunication is requiſite; though a Statute ſays "that the Perſon ſhall be *ipſo facto* "excommunicate." And they thought it would be inconvenient to admit too rigid a Conſtruction of the 41ſt Clauſe of the 5 *Eliz. c.* 4. which ſeemed to them to be a Law more beneficial to *Corporations* than to the Public in general; and which had not been much regarded or favoured.

Per Cur.—

The ORDER *of* SESSIONS *muſt be* QUASHED: And
The ORDER *of the two* JUSTICES CONFIRMED.

Vide Poſt. No. 84. *accord.*

No. 29. Rex *v.* Inhabitants of Bramſhaw.

Saturday 27th *Nov.* 1739.

Order of Removal, from one *Part of a Pariſh*, to another, muſt ſhew, that each Part is a *ſeparate Vill*, has *diſtinct Officers*, and maintains its own *Poor*.

A Motion had been made on *Thurſday* the 18th of this *November* 1739, to quaſh an Order of Seſſions confirming an Order of two Juſtices made for the Removal of *Richard Ireland* and *Elizabeth* his Wife, and *Richard*, *Chriſtian*, *John*, *William* and *Catharine* their Children from *that Part* of the Pariſh of *Bramſhaw* which is in the County of *Southampton* to *that Part of the ſaid Pariſh* which is in the County of *Wilts*; together with the original Order.

The Order of Seſſions ſtates—That *Richard Ireland* came into that Part of the Pariſh which is in the County of *Southampton*, and took a Houſe there of *Aaron Knight* at the Rent of 3 *l.* for one Year; and that the *Houſe* was there CHARGED *to the Poor-Rates* in Manner following, that is to ſay, in the Poor-Rate made for the Year 1734, "*Aaron Knight* 1 *s. ditto* for the *other* Houſe 6 *d.*" And in the Poor-Rate made for the Year 1735, "*Aaron Knight* 1 *s. ditto* for the *lit-*"*tle* Houſe 6 *d.*" Which ſaid Houſe called the *other* Houſe in the Poor-Rate for the Year 1734, and the *little* Houſe in the Poor-Rate for the Year 1735, is the *ſame* Houſe in which the ſaid *Richard Ireland* lived. That the ſaid *Aaron Knight* was *Overſeer* of the Poor of *that Part* of the Pariſh of *Bramſhaw* which is in the County of *Southampton*, and collected the ſaid Rates: And that the ſaid *Richard Ireland* PAID to the ſaid ſeveral Poor-Rates; and *after* the firſt Payment to the ſaid Poor-Rates, he lived in the ſaid Houſe for the Space of *two Years and upward*.

To theſe Orders three Exceptions were taken. 1ſt, It does not appear that theſe two Parts of the Pariſh have *diſtinct and ſeparate Officers*, or diſtinct and ſeparate *Poor-Rates*. 2d, It does not appear that there was any Settlement gained by *Richard Ireland* in that Part of the Pariſh that lies in *Wiltſhire*: On the contrary, it is apparent that he was legally ſettled in that Part of it which lies in the County of *Southampton*. 3d, The *Ages* of the Children are not ſet forth, in the original Order.

Upon ſhewing Cauſe, the Court were clear that both Orders ought to be quaſhed.

Lord *Hardwicke* was abſent. But by the other three Judges—

1ſt,

1ſt, It ſhould have appeared that theſe were *different Vills*, and had *ſeparate Officers*, and that each maintained their *own* Poor ſeparately: Whereas it here no otherwiſe appears than *only by the Direction* of the Order of the two Juſtices, "that there *are* dif-"ferent *Officers:*" And the *Direction* is *no* Part of the *Order*. Beſides, if there be different Officers, it does not follow that there are different *Rates*. And we can take nothing by *Intendment:* Inferior Juriſdictions muſt *ſet out* their Authority.

BRAMSHAW in WILTS *and* BRAMSHAW in SOUTHAMPTON.

As to the 2d Exception—Here is an *expreſs Charge upon the Owner* of the Houſe, *not upon the Tenant:* And it is a ſettled Point, "that a Perſon muſt be *rated* as well as pay; otherwiſe he gains no "Settlement." *H.* 4. *G.* 2. a Caſe out of *Staffordſhire* [between * the Pariſhes of *Kingver* and *Kingſwinford*]—where one Man was in Poſſeſſion and paid the Rate; but the *other* was *rated:* It was held that the Perſon in Poſſeſſion, who only *paid* the Rate, gained no Settlement †.

A tenant muſt be *rated*, as well as *pay*, in order to gain a Settlement.

As to the 3d Exception—In an Order to remove Children as Nurſe-children, or in Conſequence of the Settlement of their Father or Mother, you muſt ſhew their Ages. But here it is expreſsly adjudged, that that Part of the Pariſh that lies in *Wiltſhire* is the Settlement *of the Children themſelves*. [*V. ante*, No. 26.]

The Ages of Children need not be ſet forth, where the Place of their Settlement is expreſsly adjudged. *Poſt.* 45. 57. 63. S. P.

Per Cur.

BOTH ORDERS QUASHED.

Note—The above-mentioned Caſe of *Kingver* and *Kingſwinford* is in *Seſſions Caſes*, Ed. 1750, pa. 170, No. 135. But the Caſe cited at the End of it, (and reported in the ſame Book, pa. 134, No. 122.) *Sealon Tongall*, was a Caſe where *Thomas King* the Occupier *paid* without being *charged:* And the Court held *both* to be neceſſary. *Mich.* 13 *G.* 1.

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* I ſuppoſe this was the Caſe meant. At leaſt, I have ſuch a Caſe of that ſame Term.

† *V. ante*, No. 21. *Poſt.* No. 138. *Rex* v. *Inhabitants of Uffculme*; and *Poſt.* No. 148, *Rex* v. *Inhabitants of Painſwick.*

See alſo the ſeveral Caſes referred to at the bottom of *page* 74.

Hilary Term

10 Geo. 2. 1736.

No. 30. **Rex v. Inhabitants of Lower Walton.**

Thurſday 10th *Feb.* 1736.

A Tenant muſt be *rated*, as well as *pay*, in order to gain a Settlement.

TWO Juſtices removed *Joſeph Wilſon*, *Ellen* his Wife, *Elizabeth*, *&c. &c.* their Children, from the Townſhip of *Lower Walton* to the Townſhip of *Appleton* in *Cheſhire*: The Seſſions, upon Appeal, vacated the Order of the two Juſtices.

The Caſe ſtated by the Order of Seſſions was thus—*John Wilſon*, Father of the Pauper *Joſeph*, about ten Years ago, when the ſaid *Joſeph* was a Part of his Family, rented a Farm of 18 *l.* a Year in the Townſhip of *Appleton*, which the Father held for one whole Year, and during that Time lived upon the ſaid Farm in the ſaid Town of *Appleton*; and his Son *Joſeph*, as a Part of his Family, with him during that whole Year. The ſaid *John* the Father afterwards lived in the ſaid Townſhip of *A.* in a Tenement there of about 3 *l.* a Year Value: In which laſt Year the ſaid *Joſeph* married, and lived with his Wife and Family, ſeparate and apart from his Father, in another Tenement of ſmall Value, for ſeven Years, in *Appleton* aforeſaid. Afterwards, his Father, having an Eſtate of about 3 *l.* a Year in *Lower Walton*, for which he was *taxed in his own Right*, and gained a Settlement, agreed with his ſaid Son "that he ſhould hold the "ſame for a Year, and, inſtead of paying Rent, ſhould main-"tain his Father;" which he accordingly did: And his ſaid Son and Family lived in the ſaid Tenement for one Year, and his Father with him; and the ſaid *Joſeph*, that Year, PAID Taxes for the ſaid Tenement of 3 *l.* a Year in *Lower Walton*, but was NOT RATED in his *own* Name, but in his *Father's* Name; and afterwards continued there till he was removed by the above Order.

The Seſſions held that *Joſeph Walton*, *Ellen*, *&c. by Reaſon of the Premiſſes above-mentioned*, gained a Settlement in the Townſhip of *Lower Walton*; and *therefore* vacated the Order of the two Juſtices.

The

The Objection to this Order of Seſſions was, "that *Joſeph Wal-* "*ton* the Pauper, was *not rated*, though he paid. LOWER WALTON *and* APPLETON.

Cur.—He muſt both be *rated and* pay, in order to gain a Settlement.

A Rule was made on the firſt *Saturday* in this Term to ſhew Cauſe why this Order of Seſſions ſhould not be quaſhed, and the original Order affirmed: Which was now made abſolute, *without Defence.*

[*V. Aſte*, No. 21. 22, 29. accord.] See alſo the ſeveral Caſes referred to at the Bottom of *Page* 74.

Eaſter Term

10 Geo. 2. 1737.

Rex. *v.* Inhabitants of the Manor of Grafton.

No. 31. *Wedneſday* 11th *May* 1737.

TWO Juſtices made an Order for the Removal of *Elizabeth Laugher* from *Stoke-Prior* to the Manor of *Grafton*: And upon an Appeal, the Seſſions confirmed that Order.

The Caſe ſtated was—That the ſaid Manor of *Grafton* is an *extra-parochial* Place, and formerly a Seat of the Earls of *Shrewſbury*, then conſiſting of a capital Meſſuage and three Keepers Lodges in the Park adjoining; and that the Park is ſince converted into Farms; and that there are *now* FIVE *Dwelling-houſes* and Farms within the ſaid Manor (including the ſaid old Lodges) and now occupied *by* FIVE *ſeveral Tenants*. That the ſaid Pauper was hired for a Year and ſerved a Year within the ſaid Manor; and hath not ſince gained any Settlement elſewhere: And being likely to become chargeable to the Pariſh of *Stoke-Prior*, the ſaid two Juſtices, upon Complaint thereof to them made by the Churchwardens and Overſeers of the Poor of the Pariſh of *Stoke-Prior*, did, on the 10th Day of *Auguſt* laſt, by an Inſtrument in Writing under their Hands and Seals, *appoint John Webb*, Gent. an Inhabitant within the ſaid Manor,

An extra-parochial Place, conſiſting of *five* Dwelling-houſes, *&c.* is not a *Town or Village*, within the 43, 14 *Car.* 2. *c.* 12. and no Settlement can be gained therein. *V.* 2 Sir John Strange 1078. S. C. Alſo Saffron Walden Ed. 1750, Vol. 2. pa. 217. No. 152; &c.

OVERSEER

Manor of GRAFTON *and* STOKE-PRIOR.

OVERSEER *of the Poor within* the ſaid Manor; and the Pauper was removed to him by Virtue of the aforeſaid Order. That there *never* was any Overſeer of the Poor or any other Officer within the ſaid Manor, *till* the ſaid *John Webb* was appointed Overſeer as aforeſaid; or any poor Perſon, within the Memory of Man, before removed to or from the ſaid Manor. And it being the Opinion of this Court [of Seſſions] "that the ſaid Manor of *Grafton is now a Village*, and "that the Inhabitants thereof ought to maintain their own Poor," this Court [the Seſſions] doth therefore, in Conſideration of the whole Matter, confirm the ſaid Order, *&c.*

On a Motion to quaſh theſe Orders (*Wedneſday* 27th *April* 1737,) the Queſtion was, "Whether *Grafton be* a *Townſhip or Village* within 13 & 14 *C.* 2. *c.* 12. *ſect.* 21."

Mr. Serjeant *Parker*, who moved to quaſh theſe Orders, cited the Caſe of *Dalham* and *Denham* (*ante* No. 11.) and inſiſted that it was *not* a Townſhip or Village: For, there muſt be a Conſtable or Tithingman, in order to conſtitute a *Village*; whereas here they have never had any Officer at all. A Rule was then made to ſhew Cauſe why the Orders ſhould not be quaſhed: And now, upon the Motion of Sir *John Strange*, it was made abſolute, *without Defence*. [*V. ante*, No. 11. and the Caſes there referred to.]

No. 32.

Rex *v.* Inhabitants of Harrowby and Rawſby North.

Monday 23d *May* 1737.

Order made at an *adjourned* Seſſions, and a ſecond Order of Juſtices, quaſhed; the one, for not ſhewing when the *original* Seſſions were holden; and the other being made pending a prior Order, and before Appeal, *&c.*

TWO Juſtices made an Order, on the 13th of *January* 1736, for the Removal of *Thomas Ellis* and *Eleanor* his Wife from *Ancaſter* to HARROWBY. Upon Appeal to an *adjourned* Seſſions holden upon the 4th of *May* following, this *adjourned* Seſſions confirmed the Order of two Juſtices: But it did not appear *when* the *original* Seſſions was firſt holden. *Intermediately*, *viz.* on the 20th of *April*, two Juſtices (one of whom was the ſame Perſon that made it,) *called in* the firſt Order, and made *another*; by which latter Order they removed the Paupers from *Ancaſter* to RAWSBY NORTH. Upon an Appeal from this latter Order, the Seſſions adjourned all the Proceedings to the next following Seſſions.

On the 27th of *April* laſt, (the firſt Day of the preſent Term) a Motion was made to quaſh the firſt Order of the two Juſtices and the Order of Seſſions confirming it.

Cauſe being now ſhewn,

The

The Court were clear that the ſecond Order made by the two Juſtices was irregular, as being made pending the firſt, and before any Appeal, and without ſhewing any ſubſequent Settlement to have been gained: And all that was done upon that ſecond Order of the two Juſtices is therefore out of the Caſe. But the *firſt* Order of two Juſtices has no Objection at all made to it: And therefore, though the *Confirmation* of it at Seſſions be invalid, becauſe it does not * appear when the original Seſſions were holden, yet the firſt Order itſelf muſt be confirmed.

HARROWBY, RAWSBY NORTH *and* ANCASTER.

* *V. ante*, No. 26, (the ſecond Objection.) *Poſt*. No. 105.

The firſt Order of two Juſtices was CONFIRMED: And *All the other Orders* QUASHED.

ON

The Court were clear that the Second Order made by the two Justices was irregular, as being made pending the first, and before any Appeal, and without hearing any subsequent Settlement to have been passed: And all that was done upon that Second Order of the two Justices is therefore out of the Case. But the first Order of two Justices has no Objection at all made to it: And therefore, though the Quarterly of it at Sessions be invalid, because it does not appear when the original Sessions were holden, yet the first Order itself must be confirmed.

The first Order of two Justices was CONFIRMED: And the other Order QUASHED.

ON *Sunday* 20th *February* 1736-7, LORD HARDWICKE kiſſed Hands for the Great Seal; and the next Day appeared in Council and in the Houſe of Lords, as Lord Chancellor: But he continued Lord Chief Juſtice of the King's Bench till the 7th of *June* 1737.

On *Tueſday* the 7th of *June* 1737, he *ſurrendered* the Office of Lord Chief Juſtice.

On *Wedneſday* the 8th of *June* 1737, *Mr. Juſtice* LEE kiſſed Hands for the Office of LORD CHIEF JUSTICE of the Court of KING'S BENCH; and was knighted.

On *Thurſday* the 9th of *June* 1737, he was ſworn in, before the Lord Chancellor.

On *Monday* the 13th of *June* 1737, being the 4th Day of *Trinity* Term 10 & 11 *G.* 2. (which begun on *Friday* the 10th,) SIR WILLIAM LEE, KNIGHT, late Puiſnè Judge of this Court, took his Place upon the Bench, as LORD CHIEF JUSTICE; and took the Oaths, in Court.

On *Thurſday* the 16th SIR WILLIAM CHAPPLE, KNIGHT, one of his Majeſty's Serjeants at Law, and ſenior Judge of the Circuit of *North Wales*, conſiſting of *Merionethſhire*, *Carnarvonſhire* and *Angleſea*, was ſworn in before the Lord Chancellor as Puiſnè Judge of the Court of King's Bench: And

On *Monday* the 20th he took his Seat upon that Bench accordingly.

MEMORANDUM.

IT was in *Michaelmas* Term 1733, 7 *G.* 2. that SIR PHILIP YORKE, KNIGHT, then Attorney General, was called Serjeant, on *Wedneſday* the 31ſt of *October*, and the ſame Evening ſworn in Lord Chief Juſtice of the Court of King's Bench before the then Lord Chancellor King. On *Tueſday* the 6th of *November* 1733, he took his Seat upon the Bench; and on the 24th of the ſame *November* was created a Peer of *Great Britain*, by the Title of Baron HARDWICKE.

M E M O R A N D U M.

IT was in Michaelmas Term 1793-4 G. 3. that Sir Pulteney [illegible]
on Wednesday the 23d of October, and the same Term [illegible]
Lord Chief Justice of the Court of King's Bench before the then
Lord Chancellor King. On Thursday the 6th of November 1733 he
took his seat upon the Bench; and on the 25th of the same Novem-
ber was created a Peer of Great Britain, by the Title of Baron
Hardwicke.

P Trinity

Trinity Term

10 & 11 Geo. 2. 1737.

Rex *v.* Inhabitants of Butley.

No. 33.

Monday 27th *June* 1737.

Renting a *Wind-mill*, of the *Value* of 10*l.* a Year, gains a Settlement; although *Security* be given for the *Rent*. *V.* 2 Sir *J. Strange* 1077. S. C. and alſo *Seſſ. Caſes*, Ed. 1750. Vol. 1. pa. 402, No. 320. S. C.

ON Monday the 13th Inſtant, a Motion was made by Mr. *Lloyd*, to quaſh an Order of Seſſions confirming an Order of two Juſtices made for removing *Thomas Chandler* and his Wife and Children from *Benhall* to *Butley*.

The Order of Seſſions ſtates.—That *Thomas Chandler* the Pauper came with a proper Certificate from *Butley*, dated 2d *April* 1730; which he delivered to the Officers of *Benhall*. That he, ſome ſhort Time afterwards, took a Leaſe of a WIND-*mill* in *Benhall*, from one *Thomas Green*, for the Term of three Years from *Michaelmas* 1730, at the yearly Rent of 14*l.* and about the ſame Time hired of *Thomas Mann* a Cottage and a Piece of Land in *Benhall*, by Parol, to hold from *Michaelmas* 1730 for one Year, and ſo from Year to Year ſo long as it ſhould pleaſe both Parties, at the yearly Rent of 3*l.* That the ſaid *T. C.* entered upon the ſaid Mill, Cottage and Premiſſes, and occupied the ſame for three Years under the ſaid Leaſes, and *paid all the Rent himſelf:* But he had a SURETY who *engaged* for the Payment of the ſaid Rent for the *Wind-mill* during the ſaid three Years. That after the Expiration of the ſaid three Years, the ſaid *T. C.* occupied the ſaid Mill for three Years longer under a *Parol*-Agreement between the ſaid *Thomas Green* and the ſaid *T. C.* "That the ſaid "*T. C.* ſhould occupy the ſaid Mill at the ſaid annual Rent, ſo long "as he ſhould continue to pay the ſame:" And that the ſaid *T. Green* then did *not require any Surety* for ſuch Payment. And during thoſe laſt three Years the ſaid *T. C.* occupied another Cottage in the ſaid Pariſh of *Benhall*, which he hired of *John French* as Tenant at Will at the yearly Rent of 3*l.* 2*s.* 6*d.* And whereas it appears that the ſaid *T. C.* has not any otherwiſe acquired a legal Settlement in *Benhall*, now upon Debate of the Matter, and hearing Counſel on both

BUTLEY *and* BENHALL. Sides, it is ordered by this Court [the Seſſions] that the ſaid recited Order of the ſaid two Juſtices be and is hereby confirmed.

A RULE *was made to ſhew* CAUSE.

On ſhewing Cauſe,

The Counſel for the Pariſh of *Benhall* argued "that he gained "no Settlement there; for that a WIND-*mill* is *not ſuch a Tene-* "*ment* as a Man can *ſettle* in:" And yet they admitted it had been determined that a WATER-mill *does* gain a Settlement. [*V.* 1 *Salk.* 536. *Inter Evelyn* Pariſh and *Rentcomb.*] But they ſaid it was plain that this Wind-mill was not a Tenement proper to live in; becauſe the Man hired a diſtinct Cottage, to reſide in.

They further urged, that as he was forced to *give* SECURITY *for the Payment of the Rent*, whilſt he held it under the Leaſe, the Pariſh could not conſider him as a Man of ſuch *Subſtance* as not likely to become chargeable: And therefore the *Credit* of an Ability to rent 10 *l. per Annum*, which is the Foundation of the Settlement, fails in the preſent Caſe.

Mr. *Lloyd contrà*, ſaid that there was no Difference between a *Wind*-mill and a *Water*-mill: And that the Caſe of *Cranley* and St. *Mary Guildford*, in 1 *Str.* 502, was a Renting of *a* Mill, in general. And it was not neceſſary to *lie* in the Mill: It was enough that he lived in the Cottage which he rented in the *ſame* Pariſh.

And the giving Security to pay the Rent don't affect the Settlement. He paid it all, himſelf.

Mr. J. PAGE ſaid he ſaw no Diſtinction between a *Wind*-mill and a *Water*-mill. The Miller often inhabits the Wind-mill. But whether it be a *Dwelling* or no, yet ſtill it is a TENEMENT: And he reſided in the *ſame Pariſh*.

The great Objection ariſes from his giving SECURITY *for the Rent*. But the Officers of the Pariſh have nothing to do to look into *that*. And at this Rate, a *much greater* Rent might be inſufficient to gain a Settlement; though the Act *requires* no more than 10 *l.* a Year. It is the Credit of the *Taking* a Tenement of ſuch a Value, that is the Point. Suppoſe a Man had *borrowed* Money to Stock his Tenements: Has any Body any Thing to do with that? The *viſible Credit* is the grand Point.

Mr. J. PROBYN.—The Court has held a *Water-mill* to be as good a Tenement as Land: And it requires as good a Stock as Land does. A Mill was therefore holden "*To be a Tenement*," not upon

upon the *Criticiſm*, but upon the *Reality*. And I ſee no Difference between a *Wind*-mill and a *Water*-mill: The Stock, the Credit, are the ſame. And we cannot take Notice whether it had a Houſe belonging to it, or not. Indeed, if the Man had not lived in the Pariſh, it would not have done: But he *lived* in the *ſame* Pariſh, and rented 17*l.* a Year in it. BUTLEY and BENHALL.

Mr. Juſtice CHAPPLE was of the ſame Opinion. There is *no Difference* between one *Kind* of Mill and the other. The *Credit* is the Point upon which it turns: And the *Value of the Rent* is the Thing to be conſidered.

Both ORDERS *were* QUASHED.

Rex *v.* Inhabitants of Widworthy. No. 34.

Thurſday 28th *June* 1737.

TWO Juſtices removed *John Board* and *Mary* his Wife and *John* and *Robert* their Children from *Widworthy* to *Farringdon*: Upon an Appeal, the Seſſions quaſhed their Order.

The Caſe ſtated by the Seſſions was thus—This *John Board* before his Marriage was hired for a Year, and ſerved two Years as a hired Servant, according to the Statute, in the Pariſh of *Farringdon*; and afterwards removed into the Pariſh of *Widworthy* aforeſaid, and lived there with his Father and Mother in a *Cot-houſe of the yearly Value of* 30*s.* and worked as a Day-labourer for himſelf: Of which Houſe his ſaid Father then and for many Years before was poſſeſſed, for the Reſidue of a Term of Years determinable on Lives, and whereof he *died ſo poſſeſſed, without a Will* (his Wife dying before him) leaving the ſaid *John Board* and one other Son (who is ſtill living, and who took *his* diſtributive Share and Part of his ſaid Father's Eſtate and Effects, in *Goods*.) And the ſaid *John Board*, after the Death of his ſaid Father, *lived and continued in the Poſſeſſion thereof for five or ſix Years*, and until ſuch Leaſe was *determined*, which happened about a Year and a Quarter ſince: AFTER *which Time*, and AFTER *the making the ſaid Order* of Settlement, the ſaid *J. B.* TOOK LETTERS OF ADMINISTRATION *to the Goods and Chattels of his ſaid Father*. This Court [the Seſſions] being of Opinion "that the ſaid *John Board*, BY POSSESSING *and* LIVING "IN *the ſaid Cottage-houſe* in *Widworthy* aforeſaid, GAINED a *Set-*"*tlement* in the ſaid Pariſh of *Widworthy*," doth therefore vacate and make void the ſaid Order: And the ſame is hereby made null and void.

A *next of Kin* has no *Intereſt*, *before* Adminiſtration: And Adminiſtration taken out *after* the Intereſt is determined, will not gain a Settlement. V. *Seſſions Caſes*, Ed. 1750, Vol. 1, pa. 401, No. 319, S. C.

On

WIDWORTHY *and* FARRINGDON.

On *Monday* the 13th of *June*, (the 4th Day of this Term) Mr. *Gundry* moved to quash the Order of Seſſions, and affirm the original Order: And had a

RULE TO SHEW CAUSE.

In ſupport of the Order of Seſſions, it was now argued, that the two Sons had, upon the Death of their Father, an *Intereſt* VESTED in them; and *after the Agreement* between them, the *Right* VESTED *in* JOHN: So that the Juſtices could not have removed him, they ſaid, even *before* the Letters of Adminiſtration were taken out by him. And they cited a Caſe determined here, in *M.* 11 *G.* 1. between the Inhabitants of *Wyley* and of *Aſhbrittle* in *Wilts*. "A Man "built a Cottage upon the Waſte. Afterward, the Lord agreed to "grant him a Leaſe, upon depoſiting a Sum of Money in a third "Hand for a Fine: But *no Leaſe* was actually granted by the Lord. "The Tenant died. His Daughter lived in it, and married. Her "Huſband was holden to be ſettled there, though *no* Leaſe was ac-"tually granted." [See this Caſe in 1 *Strange* 608, and in *Seſſions Caſes*, Ed. 1750. Vol. 2. pa. 121, No. 115.] There was *no* legal Right.

See alſo *poſt.* No. 194. S.P.

But *this* Man came in under the Statute of Diſtributions, by an *Act of Law:* And the Juſtices had no Power to *try his Right*, which was legally veſted in him, nor to examine into the *Title* under which they found him in quiet Poſſeſſion.

But *per Cur.*—The Order of Seſſions ought to be quaſhed.

Lord Chief Juſtice LEE was abſent.

Mr. Juſtice PAGE ſaid the Order of Seſſions ought to be quaſhed for two Reaſons:

1ſt, At the *Time* of making the *firſt* Order he had gained *no Settlement* at *Widworthy*; becauſe NOTHING VESTED *in him* BEFORE *Adminiſtration* was granted to him. If ſo, then that Order for removing him was a good Order when made: And the Seſſions ought not to have quaſhed it; though Adminiſtration had been *afterwards* taken out. For they could not quaſh a good Order, upon a Matter which happened *ex poſt facto*. If this Adminiſtration really gained him a Settlement, there ought to have been a *new* Order of two Juſtices, to remove him back to *Widworthy*. When he was firſt removed from thence, he had nothing do with the Cottage: For nothing veſted in him *till* he took out Letters of Adminiſtration. Conſequently if he gained a Settlement at *Widworthy* at all, it was gained *ſubſequent* to the Making of the original Order.

But

But 2dly, He had it not at all *in his* own *Right*, even *after* Adminiſtration: Nor does it ſeem to be ſuch a *Sort* of Eſtate as would gain him a Settlement. WIDWORTHY *and* FARRINGDON.

This is a Cot-houſe of ſo ſmall a Value as 30*s.* a Year only, holden upon the Reſidue of a Term of Years determinable upon Lives. In the Caſe of *Aſhbrittle* and *Wyley*, there was a Continuance of the quiet Poſſeſſion for thirty Years and a Deſcent caſt. The Pauper had a Title againſt all the World, except the Lord of the Waſte: And it would be a good Bar even againſt the Lord, in an Ejectment. There, the Pauper clearly had ſuch a Poſſeſſion as to be irremoveable from it. But I apprehend that the Pauper, in the preſent Caſe, was removeable even during the Term: However, *afterwards*, to be ſure he was. I am of Opinion that the Order of Seſſions ought to be quaſhed.

Mr. J. PROBYN.—The whole depends upon this ſingle Queſtion, "Whether the Pauper was REMOVEABLE *during the five* "*or ſix Years that he lived in this Cottage:*" For I take the Rule, now ſettled and eſtabliſhed, to be, "that if the Pauper comes to an "Eſtate by Inheritance, or as Executor or Adminiſtrator (be it of "*ever ſo ſmall Value*,) he is irremoveable; and if he remains forty "Days in Poſſeſſion and Inhabitancy, he gains a Settlement."

Now I take it, that the Pauper in the preſent Caſe was *removeable*. His Poſſeſſion reſted *only* upon a private Agreement between him and his Brother. IF he had taken out Adminiſtration *during* the Intereſt, he *had* HAD a veſted Right: But taking out Adminiſtration AFTER *the Term expired* could never give him an Intereſt in the *expired Term*, in which he had *none during it's Subſiſtence*. He was in Poſſeſſion, merely as a *Tenant at Will:* He *was removeable* by the Pariſh; and his Right would have been without Foundation, if Adminiſtration had been granted *to any one elſe*. Therefore he had no Right at all, *till* Adminiſtration was granted.

The Caſe of *Wyley* was a ſtrong Caſe. That was a Deſcent to the Pauper after a Poſſeſſion of thirty Years; which was a good Title in an Ejectment, and a Preſumption of an Inheritance. It was *primâ facie* a good Title as Heir at Law: *None* BUT *the* LORD could conteſt the Right. And if a Pauper lives forty Days under a Right which makes him *irremoveable*, it gains him a Settlement.

Mr. Juſtice CHAPPLE was of the ſame Opinion. For there was NO *Time* DURING *the Continuance* of this Leaſe, when the Pauper

WIDWORTHY and FARRINGDON.

per was *irremoveable*: And without remaining forty Days *irremoveable*, a Settlement could not be gained by him.

And he obſerved, that there was NO AGREEMENT at all between the Brothers "that the PAUPER SHOULD TAKE THIS LEASE as "his diſtributive Share:" Or at leaſt, "no ſuch Agreement *appears* "to us." It is only ſtated, "That the other Brother DID take his "Share in Goods; and *John* did live in the Cottage." But it don't appear that this happened in Purſuance of any preceding Agreement "that it ſhould be ſo."

The ORDER *of Seſſions was* QUASHED: And
The ORDER *of the two Juſtices* AFFIRMED.

See the Caſe of *The King* againſt *The Inhabitants of Cold Aſton*, *Poſt.* No. 143. *pa.* 444. See alſo *Poſt.* No. 140. 243. *Dougl.* 609. *accord.*

Michaelmas Term

11 Geo. 2. 1737.

No. 35.

Rex *v.* Inhabitants of Hedingham Sible.

Monday 14th *Nov.* 1737.

If the Seſſions refer a Caſe *conditionally* to the next Judge of Aſſize, they muſt *continue* the Appeal by *Adjournment* to a future Seſſions; or elſe, they cannot take it up again.

ON *Monday* next after five Weeks from *Eaſter* 10 *G.* 2. (16th of *May* 1737) a Rule was made, upon the Motion of Mr. *Baldwin*, to ſhew Cauſe why the Order of Seſſions and alſo the original Order made in this Cauſe for quaſhing the original Order made in the ſame Cauſe, for removing *William Clarke* and his Wife, *Elizabeth* and *Ann their* Children from *Hedingham Sible* to *Finchingfield* (both in *Eſſex*) ſhould not be quaſhed; and why the laſt mentioned original Order ſhould not be affirmed.

On

HEDINGHAM SIBLE and FINCHINGFIELD.

On *Monday* next after the Morrow of *St. Martin* 11 *G.* 2. (14th of *November* 1737) the original Order made in this Cauſe, for removing *William Clarke*, his Wife, *Elizabeth* and *Ann their* Children from *Finchingfield* to *Hedingham Sible* was quaſhed, on the Motion of Mr. *Baldwin*. And at the ſame Time, the *Certiorari* was quaſhed as to the four Orders firſt mentioned in the Return to it.

The ſame Day, a *Certiorari* was granted, on Mr. *Baldwin's* Motion, to remove all Orders made by the Juſtices of Peace for *Eſſex* between the Inhabitants of *Finchingfield* and the Inhabitants of *Hedingham Sible*, concerning the Settlement of *William Clarke*, his Wife, *Elizabeth Clarke* and *Ann Clarke his* Children.

N. B. There was a great Deal of Confuſion about this Caſe: There being, in all, five Orders; and no leſs than ſeven Exceptions to them, ſome to one, and ſome to another. The firſt Order was an Order of two Juſtices to remove theſe Paupers from *Hedingham Sible* to *Finchingfield*. The 2d was an Order of Seſſions reciting the firſt Order, and that *Finchingfield* had appealed to them: And they adjourned the Appeal to the next Seſſions. The 3d was an Order of Seſſions referring the Matter to the Opinion of the Judge of the next Aſſizes: But *without* any particular *Continuance* of the Appeal. The 4th Order was an Order of Seſſions, made about a *Year after:* Which recited the Order of two Juſtices and the Order of Reference to the Judge, and the Judge's Opinion "that *William Clarke* had "gained a Settlement in *Hedingham Sible*;" and which diſcharged the Order of the two Juſtices, upon hearing the Judge's Opinion. The 5th Order was an Order of two Juſtices, reciting all the former Proceedings, and removing theſe Paupers from *Finchingfield* to *Hedingham Sible*.

THE COURT were of Opinion that the four firſt of theſe Orders were not properly deſcribed in the *Certiorari*; (there being a Variance in the Words "*his*" and "*their*" Children.) The 5th Order was well removed, being *rightly* deſcribed: But was given up as a *bad* one, being made whilſt the Matter was *depending* before the Seſſions. Therefore they quaſhed this laſt Order of two Juſtices, which was well removed; and quaſhed the *Certiorari*, as to the four other Orders which were not well removed by it, for Want of being properly deſcribed.

HEDINGHAM SIBLE and FINCHINGFIELD.

Memorandum.——

Afterwards, The four Orders were returned up, in Obedience to the 2d *Certiorari*. And Mr. *Baldwin* objected that the 3d of the before-mentioned Orders, not having continued the Appeal by a proper Adjournment, but only referring it to the Judge of Aſſize, without reſerving the Determination to themſelves after they ſhould know his Opinion. This was a *Diſcontinuance* of the Appeal, and the Seſſions could not take the Matter up again: And conſequently, the fourth Order (which diſcharged the original Order) was a *bad* one. And Serjeant *Price*, who was on the other Side (for *Finchingfield*) did not pretend to ſupport it.

LEE *Lord Chief Juſtice*—The former is only a conditional Reference to the Judge of Aſſize, without any Continuance or Adjournment. The latter, therefore, can't be valid.

* *Friday* 5th *May* 1738.

* *Per Cur.*—

ORDER *of Seſſions* (the 4th of the before-mentioned five Orders) QUASHED: And

The Original ORDER (for removing the Pauper from *Hedingham Sible* to *Finchingfield*) AFFIRMED.

I have inſerted this Caſe, merely to * prevent any Miſapprehenſion of its having been determined upon the *Merits*. And perhaps ſome Gentlemen who took Notes of it, may not be diſpleaſed to ſee it a little cleared of the Confuſion in which it muſt neceſſarily have appeared to them in Court; for Want of an accurate View of the ſeveral Orders and the ſeveral Rules made upon them, and a deliberate Compariſon of one with another of them, at full Leiſure to conſider and adjuſt them.

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* *V. ante*, pa. 86, "But perhaps we may hear of this Caſe again: It may be cited to us "as an Authority, *&c.*"

Rex

Rex *v.* Inhabitants of Himley. No. 36.

ON *Wedneſday* next after the *Octave* of the Holy Trinity 11 G. 2. a Rule was made, to ſhew Cauſe why an Order of Seſſions made for quaſhing the original Order made for removing *John White*, *Jane* his Wife, and *Mary*, *Jane*, *John* and *Martha* their Children from *Himley* to *Handſworth*, ſhould not be quaſhed; and the ſaid original Order affirmed.

Orders quaſhed by *Conſent*;—no Authority.

V. Seſſions Caſes, Ed. 1750, Vol. 2. pa. 225, No. 159. S. C. (though there called *Kinley*.)

I inſert *this* Caſe merely for the ſame Reaſon that induced me to inſert the laſt preceding one; namely, to *prevent* its being conſidered *as an* AUTHORITY.

The ORDERS were *quaſhed by* CONSENT.

The Court recommended it to the Parties, to conſider whether they would not conſent to quaſh them, in Order to have the Caſe more fully ſtated.

And in conſequence of that Recommendation, they afterwards did conſent; and the following Rule is entered in the Rule-book:

"*Friday* next after the *Octave* of the Purification of the bleſſed "Virgin *Mary* in the 11th Year of King *George* the Second—

"*Saffordſhire*—
"*The King* againſt *The Inhabitants of the Pariſh of Himley in the ſaid County.*

"BY Conſent of Counſel on both Sides, it is ordered that all the Orders made in this Cauſe be quaſhed for the Inſufficiency thereof.

"By Conſent of Mr. Serjeant *Hayward*, for *The Inhabitants of Himley*.

"By Conſent of Mr. *Wirley*, for *The Inhabitants of Handſworth*.

"*By the* COURT."

No. 37. Rex *v.* Inhabitants of Fifehead Magdalen.

Saturday 26th *Nov.* 1737.

Hiring for a Year, and *Service* for a Year, will gain a Settlement; though all the Service be not under the *ſame* Hiring.

A Rule was made on *Tueſday* next after the Morrow of *All Souls* 11 *G.* 2. on the Motion of Mr. *Bennet*, to ſhew Cauſe why the original Order made for removing *William Trim*, *Ann* his Wife, *William*, *Robert* and *Thomas* their Children, from *Weſt Stower* to *Fifehead Magdalen* (both in *Dorſetſhire*,) and alſo the Order of Seſſions made in Confirmation of it, ſhould not be quaſhed.

The Caſe ſtated upon the Order of Seſſions was this —— *William Trim* the Father was born in *Weſt Stower*, and afterwards hired himſelf for a Year with one *R. P.* of *Fifehead Magdalen*: With whom he lived, in Purſuance of ſuch Hiring, for one Year, and received his Wages. The ſaid Pauper afterwards went into the ſaid Pariſh of *Weſt Stower*, and *hired* himſelf to one *R. H.* of *Weſt Stower*, from *Midſummer* to *Lady-day* following, at 40 *s.* for that *Three-quarters* of a Year: And at the ſaid *Lady-day*, he received his ſaid Wages of 40 *s.* and LEFT *his Maſter's Service*; and then went to his *Father's* Houſe in *Weſt Stower* aforeſaid, *before* he and his ſaid Maſter had any Diſcourſe about continuing in his Service or making any new Contract. *After* he had been with his Father *about* ONE *Hour*, his Father adviſed him to go to his Maſter, and ſee if he could not agree with him for a Year. He accordingly went up thereupon, and met his Maſter, and *agreed with him for a Year*, at 3*l.* 10*s.* a Year; and lived with his Maſter but *half* a Year, *viz.* to *Michaelmas* following, in Purſuance of ſuch ſecond Agreement; when his Maſter turned him away, and paid him only half a Year's Wages, which he accepted of, and *quitted his Maſter's Service*. When he went from his ſaid Maſter's Houſe as aforeſaid, he had no Clothes but what he wore, except a Shirt, which he left at his ſaid Maſter's Houſe in *Weſt Stower* aforeſaid.

The Objection made to theſe Orders by Mr. *Bennet*, ſupported by Serjeant *Huſſey*, was, That *William Trim*, the Father, gained a *good Settlement in Weſt Stower*, by being *hired for three Quarters* of a Year and *ſerving it*, and then *ſerving half a Year*, *in Purſuance of a Hiring for a whole Year*. For, that here was, *upon the whole* taken together, both a *Hiring for a Year*, and a *Service for a Year*; which is all that the Statute of 3 & 4 *W.* & *M. c.* 11. *ſect.* 7. even after its Explanation by 8 & 9 *W.* 3. *c.* 30. *ſect.* 4. requires: And it has been determined

determined not to be neceſſary "that both ſhould be upon the *ſame* "Contract." In Proof whereof, they cited the Caſes of *Brightwell* and *Weſt Hanning*, *Hil.* 1 *G.* 1. (which is printed in *Lucas's Reports* 10 *Mod.* 287.) and *The King* againſt *The Inhabitants of Aynhoe*, *M.* 1 *G.* 2. (which is in *Fitz-Gibbon* 3. and 2 Lord *Raymond* 1511.)

The Anſwer given to this Objection, by Mr. *Gundry* and Mr. *Brodrep* (who were of Counſel for the Orders) was, That the former of theſe Acts requires a Hiring for a Year; and the latter, the 8 & 9 *W.* 3. *c.* 30. *ſect.* 4. expreſsly requires "that the Perſon *ſhall* "CONTINUE AND ABIDE *in the* SAME *Service* DURING *the Space of* "*one* WHOLE *Year*." Whereas the firſt Hiring, in the preſent Caſe, was only for *three Quarters* of a Year; and that Contract was DISCONTINUED *and at an* END, before the ſecond Contract was entered upon: So that it was *not* a CONTINUING in the ſame Service. He left his Service, was his own Maſter, and might have hired himſelf to another. Nor were theſe two Services both *under the* SAME *Contract*. For, the firſt Contract was for *forty Shillings* for the three Quarters of a Year: The ſecond was for 3 *l.* 10 *s.* for the whole Year; which is a quite *different Contract*.

LEE *Lord Chief Juſtice*.—I remember, the Reſolution "that "a Hiring for a Year and a Service for a Year were ſufficient to gain "a Settlement, if there were in Fact *both*; though all the Service "ſhould not be under the ſame Contract," was firſt come into in Lord *Macclesfield's* Time: And Sir *Thomas Powys* (who was juſt come into the Court) boggled very much at it. But it is now eſtabliſhed "That a Hiring for a Year and a Service for a Year will gain a Set-"tlement, though all the Service be not in Purſuance of the firſt "Hiring for a Year." The REASON given by Lord *Macclesfield* for this Reſolution was, That the *Words* of the Acts of Parliament were complied with, by there being *both* a *Hiring for a Year and alſo* a *Service for the Space of a whole Year*, although the whole Service for a Year was not performed under the Hiring for a Year: And the *Intention* of the Acts was to prevent Perſons of *no Credit* from intruding into Pariſhes. The Hiring for a Year was thought neceſſary, to ſhew that the Perſon had *Credit* enough to be hired *for a Year* by any Pariſhioner who had ſo much Confidence in him. And another Conſideration was the *Benefit* received *by the Pariſh* from the Perſon's Labour for a whole Year. Theſe were the Reaſons of the Reſolution: And this Reſolution has been adhered to ever ſince. The only Difference between the Caſes adjudged and the preſent Caſe, is, that in the Caſe now before us it is ſtated "that AFTER the Servant had *received his Wages* for the three

"Quarters

Fifehead Magdalen and West Stower.

"Quarters of a Year, and *left* his Maſter's Service, he went to his "Father's, was abſent *about an Hour*, and then came back to his "Maſter and entered into the Freſh Agreement for a Year." Now I ſee *no* Reaſon why this ſhould be looked upon as a DISCONTINUANCE *of the Service*. The Servant was a little doubtful about a new Contract; He goes to conſult his Father, and in an Hour's Time returns and makes a new Contract, and ſerves as long under it as to make up (in the whole) a complete Service for a Year. The SAMENESS *of the* CONTRACT has *not* been ſo ſtrictly inſiſted upon, as to make it abſolutely neceſſary that it ſhould be under the *very ſame* BARGAIN. I remember a Caſe (which I argued myſelf) between the Inhabitants of *Ivinghoe* and *Solebury* *, where a Shepherd was hired for a Year into *Ivinghoe*, by a Farmer who quitted the Farm to another Perſon before the Year was out, and the Servant ſerved out his Year with that other Perſon; and was holden to be ſettled in *Ivinghoe*; it being a *Continuance* in the ſame Service, under the ſame Hiring, in the ſame Farm, and under the ſame Contract which had never been diſſolved.

* *Poſch.* 4 G. 1. See Sir *John Strange's Reports*, pa. 90. *Rex.* v. *Inhabitants of Ivinghoe.*

Mr. Juſtice PAGE concurred in the ſame Opinion; and did not look upon this Abſence for an Hour, under the Circumſtance of going to conſult his Father, to be a Diſcontinuance of the Service ſufficient to prevent a Settlement.

Mr. Juſtice PROBYN.—This Matter was firſt ſettled in Lord *Macclesfield's* Time, as my Lord Chief Juſtice has mentioned: There was much Doubt about it at firſt. The Reaſon of the Reſolution was, that theſe Acts were reſtrictive of the Liberty of the Subject, and therefore ought to receive a *liberal* Conſtruction. They require a Hiring for a Year, and a Service for a Year: And both Requiſits were complied with.

The preſent Caſe was *not an abſolute Determination* of the Service. It was not a total Departure: He only went to his Father for an Hour, leaving Part of his Clothes at his Maſter's Houſe; and then agreed with him for a Year, and lived on with him. So that the Service actually continued. It is not ſtated to be a Departure from the Service, with the Conſent of his Maſter.

And it is the SAME *Service*, though performed under *two Contracts*.

Mr. Juſtice CHAPPLE alſo concurred in Opinion "that this "ſhort Abſence, under theſe Circumſtances, was *no* Diſcontinuance "of the Service." He thought this Determination to be agreeable to the former Caſes. Upon *every* new Contract, there is a *Sort* of a Diſcontinuance.

Diſcontinuance. The laſt Day of the former Contract was the firſt Day of the ſecond Service: And this was only an Hour's Abſence *within* the Space of that ſame Day. Therefore he *remained a Servant* during the *whole* Time of the Completion of his Year.

FIFEHEAD MAGDALEN *and* WEST-STOWER.

The Court conſidered this *ſpecial State* of the Caſe as containing the *only* and the *whole* Queſtion relating to the Settlement of the *whole* Family. And upon that Foot, they overruled an Argument "that "the original Order ought to be *confirmed* as to the Settlement of the "*Children*, becauſe it had adjudged their Settlement to be in *Fife-*"*head Magdalen*, and the ſpecial Matter ſtated by the Seſſions con-"cerned *only* the Father and *his* Settlement, *without* taking any No-"tice of the *Children*." For, they ſaid, they muſt take the Settlement of the Father to be the ſingle Point of Doubt as to the Settlement of *all* the Family, as the Seſſions had ſtated nothing elſe.

Both ORDERS QUASHED.

Vide Poſt. No. 147. See alſo *Poſt* No. 87. 98. 175. *Dougl.* 296. *accord. Rex* v. *Inhabitants of Caverſwall*: Where the ſame Point is fully diſcuſſed and ſettled.

Hilary Term

11 Geo. 2. 1737.

Memorandum.

THERE was no Caſe of this Kind *determined* within the Compaſs of this Term.

The Rule mentioned at the End of No. 36, between *The King* and *The Inhabitants of Himley*, was indeed made within this Term: But that was only a Rule by *Conſent*, and in order to have the Caſe more fully ſtated.

Eaſter

Eaſter Term

11 Geo. 2. 1738.

THIS Term paſſed alſo *without* any *Determination* upon the *Place of legal Settlement*: For the Rules which are before-mentioned at the End of No. 35, in the Caſe of *Hedingham Sible* could not be called ſo.

Trinity Term

11 & 12 Geo. 2. 1738.

No. 38.

Rex *v.* Inhabitants of Martley.

A ſpecial *Order*, like a ſpecial *Verdict*, ſhould ſtate, not the *Evidence* of the Fact, but the *Fact* itſelf.

THIS was an Order of Seſſions confirming an original Order of two Juſtices made for removing *Stephen Bridges*, Muſician, and his Wife and Children, from *Callow* in *Hertfordſhire* to *Martley* in *Worceſterſhire*.

They were all Strollers and Vagrants, and had been ſo all their Lives, and never gained any Settlement any where: And the Places of their Births ſeemed very uncertain. However, the Seſſions had not ſufficiently ſtated the *Facts*: They had ſtated only the *Evidence*.

THE

MARTLEY *and* CALLOW.

The Court therefore recommended it to the Counſel on both Sides to conſent "that it ſhould go down again, to be better ſtated." They ſuppoſed it to be the Intention of the Seſſions, to ſtate the Facts for the Opinion of this Court upon them. But this Court could not judge of the Place where the Paupers were born. Special Orders of Seſſions were conſidered, they ſaid, in the Nature of Special Verdicts; which are not to ſtate the *Evidence* of the Fact, but the *Fact itſelf*.

The Counſel could not conſent without Authority: But they afterwards had Authority to conſent; and both Orders were accordingly *quaſhed by Conſent*, without Prejudice to either Party, in order to have the Matter more fully ſtated as to the Facts.

The Rule was made upon *Saturday* next after the *Octave* of the *Holy Trinity* 11 G. 2. And both Orders were thereby quaſhed, "without Prejudice to either of the ſaid Pariſhes, in order that the "Merits of the Settlements of the ſaid Paupers may come more "fully in Judgment before this Court: And by the like Conſent it "is further ordered, that the Inhabitants of the Pariſh of *Martley* "ſhall accept of a new original Order for the Removal of the above-"mentioned *Stephen Brydges* and his Family from the ſaid Pariſh of "*Callow*, and not remove them back to the ſaid Pariſh of *Callow* "till the Merits of the ſaid Settlement be determined.

"By *Conſent* of Mr. Solicitor General for the Inhabitants of *Mart-*"*ley*. By *Conſent* of Sir *Thomas Abney* for the Inhabitants of *Callow*."

Note—

This Caſe is inſerted for the very ſame Reaſon as thoſe which are numbered 35 and 36, namely, to prevent any Miſapprehenſion of theſe Orders having been quaſhed upon the *Merits*.

THIS *Term* therefore likewiſe paſſed, as well as the two immediately preceding Terms, *without* any *Determination* upon the Subject.

Michaelmas Term

12 Geo. 2. 1738.

THIS Term (like the three laſt preceding) paſſed *without* any *Determination* of a Settlement-Caſe: So that there was a *whole Year* together, without any Reſolution of this Kind.

Hilary Term

12 Geo. 2. 1738.

No. 39. Rex *v.* Inhabitants of Norton.

Saturday 27th *Jan.* 1738. The maiden Settlement of a married Woman is *ſuſpended*, and ſhe cannot be removed under it, during the Coverture.

TWO Juſtices removed *Ellen Birmingham* the Wife of *Gerard Birmingham* from *Stretford* in *Lancaſhire* to *Norton* in *Derbyſhire*: And, upon Appeal, the Seſſions confirmed their Order.

The Order of the two Juſtices ſets forth a Complaint by the Pariſh Officers of *Stretford*, "That *Ellen Birmingham* the Wife of "*Gerard Birmingham* came lately to dwell, and doth now reſide in "*Stretford*, endeavouring to gain a Settlement there, having not any

V. 19 *Viner* 376. *Seſſions Caſes*, Ed. 1750, Vol. 2. pa. 323, No. 185. Andr. 307. S. C.

"Ways

" Ways qualified herſelf ſo to do according to Law; and that ſhe " is poor and become actually chargeable to the Inhabitants of *Stret-* " *ford* aforeſaid:" The Juſtices therefore, upon Examination of the Matter of the ſaid Complaint, do adjudge the ſame to be true. Then the Order goes on thus—And it appearing to us, " that the ſaid ELLEN, *before and at the Time of her Inter-marriage* with the ſaid " *G. B. was ſettled at* NORTON; and that the ſaid *G. B.* was a *Na-* " *tive of the Kingdom of Ireland*; and that he *left* the ſaid *Ellen* his " Wife *ſeveral Years ago*, and hath been *abſent* from her ever ſince; " and that it is *not known where he now is or reſides*; and that he *hath* " *not* (*as appears to us*) *gained any legal Settlement* in the Kingdom " of ENGLAND;" We therefore do adjudge that the laſt legal Settlement of the ſaid ELLEN is in NORTON aforeſaid; and do, *&c.* NORTON *and* STRETFORD.

Sir *Thomas Abney* moved on *Friday* 24th of *November* 1738, to quaſh theſe two Orders.

His principal Objection to them was, " That the Wife's Set- " tlement was SUSPENDED during Coverture."

And to prove " that *Coverture* is a SUSPENSION of a Woman's " Settlement which ſhe had before her Marriage," he cited two Caſes, *viz. Trin.* 1 *G.* 1. between the Pariſhes of *Hanway* and *Marſton*; and *Trin.* 9 *G.* 1. between the Pariſhes of *Shadwell* and *St. John Wapping*.

LEE *Lord Chief Juſtice*—It is impoſſible to maintain this Order: For I take it to be a * ſettled Point " *That her Settlement is* " SUSPENDED *during the Coverture*; though it does not abſolutely " *ceaſe*:" And the Reaſon is, becauſe the contrary Determination would give the Juſtices a Power of Divorce. The Huſband is not here ſhewn to be *dead*: Therefore the Juſtices have *not* YET *a Power to ſend her to her own laſt Settlement*.

* *Sid.* v. pa. 124. *contra.*

THE THREE OTHER JUDGES (*Page*, *Probyn* and *Chapple*) concurred: And Mr. Juſtice *Probyn* ſaid, The Court could not *preſume* the Huſband to be dead, when the Seſſions only ſtate " that it " is not known where he is or reſides."

THE COURT obſerved that it was a different Caſe, where a Woman had a *Freehold* of her own: For that would *not* occaſion a Separation from her Huſband; becauſe it would be *his* Freehold alſo.

The ORDERS *muſt be* QUASHED.
And both ORDERS *were* QUASHED.

But ſee next Page.

Norwood and Stretford.

I do not find the Case of *Shadwell* and *St. John's Wapping* in any printed Book or Manuscript: But I guess it to be the same Case which I have heard reported in the Form of a Catch, to the following Effect (if my Memory serves me right.)

A Woman having a Settlement
Married a Man with none:
The Question was, he being dead,
"If that she had, was *gone*."

* Then Lord Chief Justice.

Quoth Sir *John Pratt**—"Her Settlement
"Suspended did remain
"Living the Husband: But, him dead,
"It doth *revive* again."

Chorus *of Puisné Judges.*
Living the Husband: But, him dead,
It doth revive again.

However, the Principle upon which that Determination and the present Determination were founded (namely, "the Suspension of "the Woman's Settlement *during* her Coverture,") came afterwards to be strenuously debated and solemnly resolved and *settled*, in a Case of Removal of *Eleanor Kinley*, Wife of *James Kinley* an *Irish* Sailor, from *St. John's Wapping* to *St. Buttolph's* without *Bishopsgate*, in *Hilary* Term 1755, 28 G. 2. Of which Argument and Resolution I propose to give a full Account, when I shall come to it in the Progress of this Work. * At present, it may suffice to say, shortly, That the unanimous Opinion of the Court was, "That "the married Woman was settled in the Place of her *own* Settlement "before Marriage; which necessarily continued *till* she should "gain a new one; which she never had done, and therefore her "Maiden-Settlement *remained*." And they affirmed the Order which removed her to it.

* *Vide Post.* No. 118. *pa.* 367.

Rex

Rex *v.* Inhabitants of Sowton. No. 40.

Thurſday 8th *Feb.* 1738.

TWO Juſtices removed *Thomas Wills, Richard, Thomas, Mary, John* and *Alexander* his Children from *Sowton* to *Sydbury* in *Devonſhire:* And upon Appeal to the Seſſions, they vacate the Order of the two Juſtices.

On *Saturday* 28th *October* laſt, a Motion was made to quaſh this Order of Seſſions.

Caſe—Upon Complaint made by the Churchwardens and Overſeers of *Sowton* to two Juſtices of Peace (*Richard Duke* and *Richard Beavis*, Eſquires,) "That *Thomas Wills, R. T. M. J.* and *A.* his "Children lately intruded into their ſaid Pariſh and are likely to be-"come chargeable there," They upon Examination and Hearing of all Parties, find the Allegation to be true, and that the ſaid *Thomas Wills, R. T. M. J.* and *A.* his Children were laſt legally ſettled in the ſaid Pariſh of *Sydbury:* Therefore they adjudge that the ſaid *Thomas Wills, R. T. M. J.* and *A.* his Children are likely to become chargeable to the ſaid Pariſh of *Sowton*, and that the ſaid Pariſh of *Sydbury* is the Place of their laſt legal Settlement, and that they ought to be removed to the ſaid Pariſh of *Sydbury*, as the Law in that Caſe made and provided, directs and appoints. And then they make an Order for their Removal to *Sydbury*.

Reſidence for 40 Days in the *Pariſh*, where a Man has an Eſtate of his own, (*except it be* by *purchaſe under* 30*l.*) is ſufficient to gain a Settlement; though the Reſidence be not ON *the Eſtate* or *ſucceſſive*.

V. Seſſions Caſes, Ed. 1750, Vol. 2. pa. 211. No. 150.

Afterwards, the Quarter-Seſſions make an Order as follows, (and the Order of Seſſions is ſigned and ſealed by the two Juſtices only who made the firſt Order; though many others are named in the Caption.)

Upon hearing the Differences between the Overſeers of the Poor of the Pariſhes of *Sowton* and *Sydbury* in this County, and on the Appeal of the ſaid Officers of *Sydbury* from an Order lately made by *R. D.* and *R. B.* Eſquires, two of his Majeſty's Juſtices of the Peace of this County (one of the *Quorum*) for the Removal of *Thomas Wills, R. T. M. J.* and *A.* his Children, poor Perſons, from the ſaid Pariſh of *Sowton* to the ſaid Pariſh of *Sydbury*, as the Place of their laſt legal Settlement; it appearing unto this Court that the ſaid *T. W.* the Father for ſeveral Years together rented an Eſtate in the ſaid Pariſh of *Sowton* of upwards of 100*l.* a Year, and thereby gained a legal Settlement there, for himſelf and his ſaid Children; and that being conſiderably in Arrear for the Rent of the ſaid Eſtate, his Goods were diſtrained for ſuch Rent; and after ſuch Diſtreſs, he the

Sowton and Sydbury.

the ſaid *T. W.* quitted the ſaid Eſtate to his Landlord; and having *an Eſtate in his own Right*, for *ſome Term or Terms of Years*, in the ſaid Pariſh of *Sydbury*, of 19*l.* 10*s.* *a Year*, in the Poſſeſſion of one *Greenſlade* as Tenant to him thereof for a Term of Years then unexpired, on or about the 2d of *November* laſt, left his ſaid Children, (the ſaid *R.* then of about the Age of 22 Years, the ſaid *T.* of about the Age of 19 Years, the ſaid *M.* then about 16 Years old, the ſaid *J.* about 13, and the ſaid *A.* about 8 Years old,) at a publick Alehouſe in the ſaid Pariſh of *Sowton*, *none of the ſaid Children having then or ſince gained any Settlement by any Act of their own*, and went into the ſaid Pariſh of *Sydbury*: and *in Conſideration of* 8*l.* *paid him by his ſaid Tenant*, accepted a Surrender of the ſaid Term, and had Poſſeſſion of the ſaid Premiſſes in *Sydbury* delivered to him, and the Keys of the Houſe thereof; and from the Time of his ſo going into the ſaid Pariſh of *Sydbury*, lodged at a PUBLIC HOUSE there, about half a Mile diſtant from the ſaid Premiſſes, and there tarried for about the *Space of five Weeks*, and in that Time looked after his ſaid Eſtate and employed Workmen to make the Hedges, and cut Wood thereon and ſold the ſame, and employed Perſons to weed ſome Turnips; and went from the ſaid Pariſh of *Sydbury to the ſaid Pariſh of Sowton to ſee his Children*, and *tarried there about a Week*; and went again to the ſaid Pariſh of *Sydbury*, and *lodged at the ſaid Public Houſe*, and looked after his ſaid Eſtate and managed the ſame as aforeſaid, and frequently went into the ſaid Pariſh of *Sowton* to ſee his Children as aforeſaid, and to other Pariſhes, to ſee his Friends, and as his Buſineſs and Occaſions required; and that he was in the ſaid Pariſh of *Sydbury*, lodging as aforeſaid, from the ſaid 2d of *November* till ſome Time in *April* following, and took the ſame for his *Home or Habitation*, apprehending He had no other; and that ſome Time in the ſaid Month of *April* He *conveyed away his Eſtate and Intereſt* in the ſaid Premiſſes and came back to *Sowton*; whereupon the ſaid Order was made; and that he was in *Sydbury more than* 40 *Days* IN THE WHOLE, *but did not tarry nor was there* 40 *Days* SUCCESSIVELY OR AT ANY ONE TIME, but was *as long Time abſent*, in the Time aforeſaid, *from the ſaid Pariſh of Sydbury, as He was there*; But that He had *no Bedding or any Houſhold Goods* in the ſaid Houſe on the ſaid Premiſſes, nor any *Stock* thereon, nor paid any *Taxes* or *Rates* within that Time; and that whilſt He was in the ſaid Pariſh of *Sydbury*, He always lodged at the ſaid Public Houſe *as a* GUEST or TRAVELLER, having made no Agreement for his Diet or Lodging; and that He ſometimes eat with the Family, but generally provided his own Meat, and paid only for his Drink as other Gueſts, the Maſter of the ſaid Public Houſe not expecting

pecting any Thing for his Lodging and for what He did eat with the ſaid Family; and that there was *no particular Room or Bed* in the ſaid Public Houſe kept or agreed to be kept for him; but that He lodged *ſometimes in one Bed* and *ſometimes in another* in the ſaid Houſe, as beſt ſuited the Convenience of the Family, and according as they had other Gueſts. And this Court [the Seſſions] being of Opinion "That the ſaid *Thomas Wills* the Father did *not* by his *having ſuch* "*Eſtate and his ſo being in the ſaid Pariſh of Sydbury* as aforeſaid, "gain any Settlement in the ſaid Pariſh for Himſelf or any of his "ſaid Children," doth therefore vacate and make void the ſaid Order: And the ſame is hereby made null and void.

Sowton and Sydbury.

R. Beavis. (LS)
R. Duke. (LS)

This Caſe was firſt argued on *Saturday* 25th of *November* laſt: But was then adjourned, in order for the Judges to have Copies of the Order; becauſe the Objections aroſe upon the State of the Caſe. It was now debated again.

The Counſel for the Motion argued, that *Thomas Wills's* Settlement appeared plainly to be in *Sydbury*; having come thither to live upon his *own*; and having been irremoveable from it; and having reſided there *more* than 40 Days in the *Whole*. And it was not neceſſary to reſide *in* his own Houſe: Reſiding in the * *Pariſh* is ſufficient.

* *V. Ante*, No. 33. *Poſt*. No. 42.

The Counſel for the Pariſh of *Sydbury* urged, That this Man and his Children were once legally ſettled in *Sowton*. That the Order does not ſtate what Term He had in this Eſtate at *Sydbury*; or how He came by it; or whether it was a beneficial Intereſt: (And the Court will not preſume any of theſe Matters.) Nor is the *Manner* of his living and reſiding in this Pariſh ſufficient. It is not ſufficient unleſs the Perſon comes to reſide *as a Pariſhioner*, and with a *Deſign* to ſettle and inhabit: For without that, it was inſiſted by them, that He could not gain a Settlement. But that was far from being this Man's Caſe. He was ſettled at *Sowton*, and left all his Family there. He did not remove with his Family, nor reſide *upon* the Eſtate, but lodged at a Public Houſe as *a Gueſt* or *Traveller*; and conſequently *not* as an Inhabitant: And He did not reſide there for 40 Days together; but was as long abſent as preſent.

Lee *Lord Chief Juſtice*—The Queſtion is, "Whether there was "ſuch an Intereſt in *Thomas Wills* in this Eſtate in *Sydbury*, at the "Time when He went into the Pariſh of *Sydbury*, as that it can be "con-

Sowton and Sydbury.

"considered as *his own*, distinguished from a Rack-rented Estate," (For it is not mentioned as an Acquisition by Purchase: So that the Act that requires a Consideration of 30 *l. bonâ fide* to be paid, is out of the Case.)

If He came to the Estate by *Act of Law*, the Act of 13 & 14 *C.* 2. *c.* 12. relating to Vagrants does not extend to it; nor is the *Quantum* of the Estate, in such a Case, material. * The Case of the Leasehold which was the Man's own, and was determined to make a Settlement, was of very small Value.

* *V. Ante*, No. 4. pa. 9, 10, 11.

This Fact is not so fully set out as it might have been: For the Order does not express *how* He came to the Estate. But nevertheless I should think it a *beneficial* Interest: At least, We are not authorised to say that He came to it by *Purchase*; (which is the only Way to bring it within the Act of Parliament, which requires it to be of thirty Pounds Value.)

In the Case of *Sundrish*,—* It appeared to be his *own* Estate; and therefore not within the Statute of 13 & 14 *C.* 2. *c.* 12. as an Intruder into a Parish; and consequently, not subject to Removal.

* *Ante*, No. 4.

Then as to this Man's *Residence*—A Residence in any Place for 40 Days, being irremoveable from thence, gains a Settlement. *P.* 11 *Ann.* between the Parishes of *Harrow* and *Edgware* *.

* *V. Ante*, pa. 8. and *Fortescue's Rep.* 310.

There is sufficient stated here, to shew that He had *quitted* the other Place, and came to *Sydbury* to make it his *Home and Habitation*. And by the old Law, a Man after *three* Days was looked upon as an Inhabitant: The first Day, He was a Stranger; the second, a Guest; the *third*, an *Inhabitant*.

It makes no Difference, Whether he was at his *own* House, or at *another* Person's, or at an *Alehouse*: He was 40 Days in an irremoveable State, in *Sydbury*.

The only Question is Whether He *gained* a Settlement in *Sydbury*: For if He did, his *losing* his former Settlement in *Sowton* is consequential upon it, and follows *of course*.

Upon the whole, I think it is a Settlement in *Sydbury*. And you all agree that the *Children* must go with the Father, as they have not gained any Settlement of their own, and remain Part of his Family.

The other three Judges concurred in the same Opinion.

They said the Order might indeed have been more fully stated; (*i. e.* Whether he came in by Purchase, or by Descent, Executorship, &c.) But they could not intend it to be *by Purchase under* 30 *l.* If they should intend it a Purchase at all, they must intend it to be for a Consideration of *more* than 30 *l.* For if less, it should have been shewn on the other Side.

The

The Facts ſtated are Acts of Occupation, and Evidences of Enjoyment: And 40 Days Reſidence in the Pariſh *in the Whole*, tho' *not ſucceſſive*, is ſufficient to gain him a Settlement. SOWTON *and* SYDENHAM.

Per Cur.

RULE *to quaſh the* ORDER *of Seſſions, and* CONFIRM *the original* ORDER.

V. Poſt. No. 42. 110. S. P. *Str.* 579. 2 *Seſ. Ca.* 40. S. P. as to an *Apprentice*, *Poſt.* No. 82. 258. *Dougl.* 633. S. P. as to an *hired Servant*.

Eaſter Term

12 Geo. 2. 1739.

Rex *v.* Inhabitants of Woolſtanton. No. 41.

Thurſday 17th *May* 1739.

ON the ſecond *Wedneſday* in *Hilary* Term laſt, a Motion was made to quaſh an Order of Seſſions made for quaſhing an original Order of Removal of *John Malkin* from *Woolſtanton* to *Uttoxeter*: And on the laſt Day of laſt Term, an Objection was made to this Order of Seſſions; which it is not material to ſpecify, as it was not proceeded upon.

To make a good Binding, under 43 *Eliz. c.* 2. *ſ.* 5. one of the two Juſtices who aſſent to it muſt be of the QUORUM; and this muſt be alledged in the Order of Removal. *V.* Sir *John Strange* 1110. S. C.

For, ſeveral Exceptions were taken to the original Order; all which were overruled, except the ſecond: And that was as follows.

The Caſe appeared to be, That the Pauper was a poor Boy and a Cripple from his Birth, and was ſettled at *Woolſtanton*, and was bound Apprentice to a Maſter at *Uttoxeter* by the Pariſh-Officers of *Woolſtanton*, by the *Aſſent of two Juſtices of the Peace:* But the *Boy* himſelf was *not* a Party to the Indenture.

Now this ſecond Exception was, That this Binding by the Aſſent of theſe two Juſtices is not ſufficient: For it is not alledged "that "one of them is of the QUORUM;" which by the Act of 43 *Eliz. c.* 2. *ſ.* 1 & 5. is abſolutely neceſſary; the fifth Section having ſuch

WOOLSTANTON and UTTOXETER

a *Reference* to the four preceding Sections, as plainly to ſhew this to be eſſentially requiſite.

THE COURT had no Doubt upon any of the Objections except this ſecond. Upon this Objection it was adjourned.

It was again argued on *Friday* laſt (11th *May*,) when the Counſel for *Woolſtanton*, in Anſwer to this ſecond Exception, urged that it being expreſsly ſtated, "That the Indentures were allowed and ap- "proved *by two Juſtices of the Peace*," This imports that they were *ſuch* Juſtices as the Act directs. And they cited a Caſe between the Pariſhes of * *Newbury* and *St. Mary, Reading*, *H.* 3 *G.* 1.

* *V. Caſes of Settlements*, pa. 77. No. 100. and *Foley's Poor-Laws*, pa. 168.

LEE *Lord Chief Juſtice*.—The Caſe of *Reading* and *Newbury* is the very Point: There the Binding was *not* mentioned to be with the Conſent of two Juſtices. Therefore I deſire to look into that Caſe, in order that we may act conformably to our Predeceſſors.

There have been Doubts in this Court about the underſtanding ſpecial Orders of Seſſions. In Lord *Parker's* Time, it was ſaid that if the Juſtices had not given *bad* Reaſons, the Court would *intend* they did right: But I think, ſince I have ſat here, (and I believe my Lord *Hardwicke* declared it to be his Opinion,) it has been holden, that upon ſpecial Orders, if the Juſtices do not ſet out ſufficient to ſhew a Settlement, the Court can not intend it to be one.

I think a Binding is abſolutely neceſſary. This is a Binding under the 43 *Eliz. c.* 2. which requires the Binding by the Church-Wardens and Overſeers, to be by the Aſſent of two Juſtices of the Peace,

* *V.* Sect. 5.

The * Words are—"by the Aſſent of *any* two Juſtices of the Peace *aforeſaid*."

The Queſtion is, "Whether they ought to be of the QUORUM." I think the Words of this Clauſe have ſuch a *Reference* to the former Clauſes, that they *ought*. But then, "Whether this ought "neceſſarily to *appear*," is another Queſtion: And I would look into it, that our Judgments may be conſiſtent.

The Court having taken a few Days to conſider it—

Lord Chief Juſtice LEE now delivered their Opinion.

We gave our Opinion before, as to all the Exceptions ſaving that of its not being alledged that one of the Juſtices was of the QUORUM.

The Caſe of *Newbury* and *St. Mary's, Reading*, *H.* 3 *G.* 1. was a Determination "that the Binding, in that Caſe, was good ſo as "to make a Settlement, though no Conſent of the Juſtices appear- "ed upon the Order." But it appeared that the *Apprentice had conſented*; had *executed* the Indenture; and had *ſerved* as an Apprentice purſuant to the Binding: And *therefore* the Court conſidered it as a ſufficient Binding.

The

Woolstanton and Uttoxeter

The Act of 43 *Eliz. c.* 2. does require one of the Juſtices to be of the *Quorum*, throughout *all* the Clauſes of it: And 8 & 9 *W.* 3. *c.* 30. * recites this very Clauſe, as *expreſsly requiring* one of the Juſtices to be of the *Quorum*, in this Caſe. And this Point was expreſsly determined in the Caſe of *Horley* and *Charlton*, *B. R. H.* 5 *G.* 2. It was ſtated there, expreſsly as this is; and the Exception was taken "that neither of the Juſtices *appeared* to be of the "*Quorum*." It was adjourned till the *Eaſter* Term following; and then the Order was quaſhed, by † my Notes, *upon this Exception*. It was ſtated "that the Apprentice was bound by the Conſent of "two Juſtices;" But neither of them was *alledged* to be of the *Quorum*. I have ordered the Rules to be looked into: And they go no further than a Rule to quaſh *niſi Cauſa*; and nothing further appears to be done. But I have taken it, that it was quaſhed for *this* Exception.

We are of Opinion that the Order of the two Juſtices in the preſent Caſe be quaſhed, and the Order of Seſſions affirmed.

The RULE entered in the Rule-Book is, That the Order of Seſſions made for quaſhing the original Order made for removing *John Malkin* from *Woolſtanton* to *Uttoxeter* be * AFFIRMED.

* *V.* Sect. 5.

† My own Note of this Caſe names the two Pariſhes to be *Horſley* and *Carlton*, and the Apprentice *Mary Danvers*. It is of *Hil.* 5 *G.* 2. When it was argued and adjourned. But I have no Note of it in *Eaſter* Term, or afterwards.

* Note, the Court pronounced this Rule wrong at firſt: But upon Sir *Thomas Abney's* Application, and ſtating the Orders, the Chief Juſtice pronounced it as above.

I mention this, for the Sake of thoſe Gentlemen who might hear the Court pronounce it, and not be apprized of their ſubſequent Correction of it.

Trinity Term

13 Geo. 2. 1739.

Rex *v.* Inhabitants of St. Nyott's.

No. 42.

Friday 29th *June* 1739.

A Pauper cannot be removed *to* a Place, where he has an Eſtate of his own, unleſs he has been reſident there, irremovable, forty Days; but afterwards he may. And the forty Days need not be *ſucceſſive*.

See Sir *John Strange* 1116. S. C. and alſo *Seſſions Caſes*, Ed. 1750. Vol. 1. pa. 400. No. 318. S. C.

ON *Monday* the 14th of *May* laſt, a Motion was made to quaſh an Order of Seſſions which quaſhed an original Order of two Juſtices made for removing one *Nicholas Penquite* from *St. Nyott's* to *St. Cleere*, (both in *Cornwall*.)

Upon Appeal, an Amendment in *Form* was prayed, and ordered; After which Amendment, the Seſſions entered into the Merits (as the Order of Seſſions ſets out:) And it appeared to them that *Nicholas Penquite*, the Pauper, was born in *St. Cleere*; that at 10 or 11 Years of Age, he removed to *St. Nyott's* and lived in the Service of Mr. *Cole* of that Pariſh till he was 20, in *St. Nyott's*; and then lived a Year and upwards, as a hired Servant at the Wages of 5*l.* a Year, with *R. Lyne* in *St. Nyott's*. That then he removed to *St. Cleere*, and lived there with his Mother ſome Time, on a Tenement there, in Part of which he had *an Eſtate of Freehold and Inheritance*, and of which he was ſeiſed in Common together with his Mother and Siſters: And that after he came back to *St. Cleere* as aforeſaid, and *until he ſold* his Right and Intereſt in the ſaid Tenement (which was about 3 Years after his Return to *St. Cleere*) he worked as a Day-Labourer, and *lodged ſometimes on his own Eſtate* and ſometimes in *other* Places where he worked *in the ſaid Pariſh of St. Cleere*, and *at other Times in other Pariſhes* adjoining; and believes that he did not live and reſide on his ſaid Eſtate in *St. Cleere* or in the ſaid Pariſh of *St. Cleere* by the Space of 40 DAYS TOGETHER *at any* ONE *Time*, between his leaving the ſaid *Roger Lyne's* Service in *St. Nyott's*, and the ſaid *Nicholas Penquite's* ſelling his ſaid Eſtate in *St. Cleere*.

And therefore, and for the Reaſons aforeſaid, and upon hearing what could be further alledged and proved upon Oath, they diſcharge the Order of the two Juſtices, upon the Merits; and order the Pauper to be conveyed, *&c*, to *St. Nyott's*.

In

In Support of this Motion, it was ſaid that when a Man *reſides upon his Freehold* for 40 Days, and is *irremovable* during that Time, he gains a Settlement: And that it is not neceſſary that he ſhould be reſident 40 Days TOGETHER. This was determined in the Caſe between the Pariſhes of *Sydbury* and *Sowton* in the laſt Term. [See before, No. 40.] St. Nyott's and St. Cleere.

Lord Chief Juſtice LEE—I do not ſee how a Man could be ſent TO a Place where he has a Freehold, unleſs he has been reſident in ſuch Place for 40 Days: Though he could not be removed *from* it, even within the 40 Days, if he was in the Place where it lay.

This depends upon the Statute of 13 & 14 *C.* 2. *c.* 12. which directs the ſending a Pauper to the Place where he was laſt legally ſettled FOR THE SPACE OF 40 DAYS. But this Man continued, off and on, for three Years in the Pariſh where he had an Eſtate of Freehold and Inheritance: And I do not think it to be neceſſary that he ſhould have reſided there 40 Days TOGETHER. He was irremovable from *St. Cleere's* for above 40 Days: And that is ſufficient. I agree that he could not be ſent * *to* a Place where he has an Eſtate of Inheritance, UNLESS he had been ſettled at it, ſo AS *to be irremovable from it for the Space of* 40 *Days.*

THE THREE OTHER JUDGES agreed in Opinion, that if he has Lands of Inheritance in the Pariſh, it is not neceſſary that the Reſidence be UPON *the Lands:* It is enough if he reſided IN *the* PARISH. And they alſo concurred with the Chief Juſtice, that the 40 Days need not be *continued:* A Reſidence of 40 Days *in the Whole* is ſufficient †.

* *V. Poſt.* No. 110. *Rex* v. *Inhabitants of Weſt-Shefford,* ſettled accordingly; (On *Friday* 8th *November* 1751.)

† See the ſeveral Caſes referred to at the End of No. 40. *pa.* 129.

Per Cur.

ORDER *of Seſſions* QUASHED.

ORDER *of two Juſtices* CONFIRMED.

Rex *v.* Inhabitants of Eaſt-Bridgeford. No. 43.

Wedneſday, 11th *July,* 1739.

UPON *Tueſday* 26th of *June* laſt, a Motion was made to quaſh an Order of Seſſions confirming an Order of two Juſtices made for the Removal of *Thomas Alt* from *Orſton* to *Eaſt-Bridgeford* (both in *Nottinghamſhire.*)

An *Apprentice* gains a Settlement, by ſerving Forty Days, in a *different* Pariſh, under an ASSIGNMENT, made by the *Aſſignee* of the *Widow* of the *Original Maſter.*

The Caſe ſtated upon the Order of Seſſions was, That *Thomas Alt* the Pauper was bound *Apprentice,* by Indentures dated 25th *May* 1727, to *William Henſton* of *Orſton* aforeſaid *Webſter,* for 9 Years, and duly ſerved him the firſt four Years of the ſaid Term at *Orſton:* And

V. Sir *John Strange* 1115. S. C. Alſo *Seſſions Caſes,* Ed. 1750. Vol. 2. pa. 285. No. 151. S. C.

Orston and East Bridge-ford.

And the ſaid *William Henſton* then dying inteſtate and inſolvent, *his Widow* (WITHOUT *any* ADMINISTRATION *taken*, that appears to this Court,) *aſſigned him over* to *Edward George* of *Staunton* in this County *Webſter*, a Certificate-Man, for the Remainder of the ſaid Term, in Conſideration of 3*l.* paid her by *George*; and, purſuant thereto, the ſaid *Thomas Alt* lived with and ſerved the ſaid *George* about a Year and a half at *Staunton*; and then the ſaid *George*, in Conſideration of 40*s.* paid him by *Thomas Baggaley* of *Eaſt-Bridgeford* aforeſaid *Webſter*, did, *with the Conſent* of the ſaid *Thomas Alt*, *aſſign over* the ſaid *Alt*, by *verbal Agreement* to the ſaid *Thomas Baggaley* for the Remainder of the ſaid Term of nine Years; and accordingly the ſaid *Thomas Alt lived, and ſerved out the Remainder* of the ſaid Term, with the ſaid *T. Baggaley* at *Eaſt-Bridgeford*. But it does not appear to this Court [the Seſſions] that the ſaid *Henſon's* Widow was, at the Time of the ſaid ſecond Aſſignment, Party or Privy thereto: But about ſeven or eight Months after, ſhe was acquainted therewith, and very well approved it. And the Court [of Seſſions] being of Opinion "That the ſaid *Thomas Alt*, *by Virtue of* "*the ſaid Aſſignment and Service at Eaſt-Bridgeford*, gained a *Set-*"*tlement in Eaſt-Bridgeford*," It is therefore ordered by the Court that the ſaid Order or Warrant of Removal be, and the ſame is accordingly confirmed upon the ſaid Pariſh of *Eaſt-Bridgeford*.

The Objection to this Order was, That the *Widow* of the deceaſed Maſter had no legal Intereſt in his Apprentice: She had not taken out any *Letters of Adminiſtration*, nor had *any kind of Authority to make ſuch Aſſignment*. And conſequently, the ſecond Aſſignment of him, made by her Aſſignee, is totally invalid and nugatory.

Upon ſhewing Cauſe now, it was ſaid that though the Widow did not take out formal Letters of Adminiſtration, yet ſhe appears to have been *Executor de ſon tort*: And an Executor *de ſon tort* may do legal Acts. And an Apprentice may gain a Settlement under an Aſſignment even by Parol only. 1 *Salk.* 68. *Caſtor* and *Aicles*; and *P.* 3. *G.* 2. *B. R. Rex* v. *Barnes*.

Moreover, this Apprentice muſt be either under the Power of the Executor *de ſon tort*; or be *ſui juris*. Now, if the former; the Aſſignment is good: If the latter, then an Agreement by a Perſon *ſui juris*, to ſerve for three Years and a half will bind him.

In Reply, It was agreed that an Apprentice may gain a Settlement under even a Parol Aſſignment. But the Maſter's Widow is *not* here *ſtated* to be *Executor de ſon tort*: And the Court will not *preſume* that ſhe did a *Wrong*. This might poſſibly be *Evidence* of her

her being Executor *de ſon tort:* But, at fartheſt, it is ONLY *Evidence.*

ORSTON *and* EAST BRIDGEFORD.

THE WHOLE COURT were unanimous this was a *good* Settlement in *Eaſt-Bridgeford*, where the Apprentice lived above 40 Days with *Baggaley:* Since, to this Aſſignment, though only a *verbal* one, there was the *Conſent of all the Parties concerned*; and he lived and inhabited at *Eaſt-Bridgeford under* the Terms of the Apprenticeſhip, *as* an Apprentice bound according to the * Act of Parliament.

* *Vide Ante* pa. 16. in Margin.

They obſerved that an Aſſignment of an Apprentice is not conſidered as a *ſtrictly legal* Tranſaction; (becauſe the *Perſon* of a Man is not ſtrictly and legally *aſſignable:*) But it has been an equitable Conſtruction, "That where an Apprentice has *lived* 40 *Days un-* "*der an Aſſignment*, he ſhall thereby gain a Settlement, becauſe "of the *Conſent*."

The Statute of 13 & 14 *C.* 2. *cap.* 12. *ſect.* 1. requires the ſending to the Place where he lived as Apprentice 40 Days. The Act of 3 & 4 *W.* & *M. cap.* 11. *ſect.* 8. only requires a Binding.

Per Cur.

Both the ORDERS *were* AFFIRMED.

V. Ante No. 5. and the former Caſes therein cited, as well as the ſubſequent Caſes referred to at the End of it, pa. 16. *particularly*, No, 84. See alſo *Dougl.* 69.

Michaelmas

Michaelmas Term

13 Geo. 2. 1739.

No. 44.

Friday 16th *Nov.* 1739.

To make a good Order of Removal, *both* Juſtices ought to be *preſent* at the *vivâ voce* Examination of the Witneſſes: And though they need not ſet forth the *Grounds* of their Adjudication, yet when they do, the Court will *judge* of them.

Rex *v.* Inhabitants of Coln St. Aldwin's.

ON *Friday* the 6th of *July* laſt, a Motion was made by Mr. *Yate*, to quaſh an Order of Seſſions confirming an Order of two Juſtices for the Removal of *Elizabeth Hayes* the younger, otherwiſe *Turin*, (who was an Infant Baſtard-Child of about ſix Years of Age,) from *Highworth* in *Wilts* to *Cown St. Allen's*, otherwiſe *Coln St. Aldwin's* in *Glouceſterſhire*.

1*ſt* Exception. The Order for Removal is made by two Juſtices of *Wiltſhire*; and is grounded upon the Examination of the Mother of the Child removed, taken before two Juſtices of *Middleſex*: Which is not ſufficient, though verified by an Affidavit "that it "was duly taken."

2*d*. It is not even ſaid that it was taken *within the County of Middleſex*.

3*d*. A *Nurſe-Child* of ſix Years old ought to have been ſent *with* its Mother; not to a *different Place* from that where the *Mother* is.

4*th*. There was another Order depending at the ſame Time, for the Removal of this ſame Child from *Coln* to *Highworth*. It was made on the 21ſt of *April* 1737; and was confirmed, on Appeal, in *July* following: After which, *viz.* in *December* 1737, the preſent original Order of the two Juſtices was made.

N. B. The Juſtices adjudged it to be a Baſtard-Child, born in *Cown St. Allen's*, whoſe putative Father was dead.

The Anſwers given to theſe Exceptions, by the Counſel for the Orders, were

To the firſt and ſecond—A Certificate of one Juſtice is to be regarded by another Juſtice. But they do not reſt upon that Certificate only: For they themſelves adjudge "that it appears to them "upon due Examination and Inquiry, upon Oath, into the Pre-"miſſes."

3*d*. The

3*d*. The Mother, after her firſt Examination, run away: And it is not known what is become of her: And the Child, being a Baſtard, was very properly ſent to the Place of its Birth. COLN St. ALDWIN's and HIGHWORTH.

4*th*. The Order of Seſſions, confirming the Order for the Removal of this Child from *Coln* to *Highworth*, was quaſhed here. Therefore that did not ſtand in the Way of a ſecond Order of Removal to *Coln*.

Lord Chief Juſtice LEE—That does not appear: *As* it ſtands, it ſeems to conclude you.

The Exception to the Evidence has a great deal of Weight in it. Certainly it is not neceſſary for the Juſtices to ſet forth the Evidence upon which they ground their Adjudication. But if it appears that they have received and regarded Evidence which they ought not to have received, it will vitiate the Order. Now it is plain that theſe *Wiltſhire*-Juſtices have grounded their Adjudication upon the Examination tranſmitted to them from the *Middleſex*-Juſtices. What they examined and inquired into upon Oath, was the Conveyance of the Child out of one Pariſh into the other. Now the Examination on which they relied, being taken by two Juſtices of another County; and the Perſon examined by thoſe Juſtices remaining ſtill alive, for ought that appears to the contrary; it is plain, this Depoſition *ought not to have been received as Evidence* to *ground* their Adjudication upon; though it might perhaps have been uſed as *concurring* Evidence.

I have often heard it declared here (and by Mr. Juſtice *Eyre* particularly) "that Both Juſtices ought to be preſent at the *vivâ voce* "Examination of the Witneſſes."

Mr. Juſtice PAGE—I remember a Caſe where it was determined that Both Juſtices muſt be preſent; and that it is not ſufficient for one Juſtice to examine the Matter and tranſmit it to the other, and that other to ſign the Order without examining into the Matter himſelf.

If the Woman was alive, ſhe ought to have been examined by theſe Juſtices themſelves. But even ſuppoſing that ſhe was not alive, yet ſtill I do not know that they could regard that *Middleſex* Examination. It does not appear that the *Middleſex*-Juſtices had any Juriſdiction: For *no Complaint* appears to have been made before them; and if not, they could have no Juriſdiction.

The Juſtices having ſet forth (though they were not bound to do it) the *Grounds* of their Adjudication, the Court will judge of the Sufficiency of them. *Vide Ante*, No. 18. S. P.

(Mr. Juſtice PROBYN was not in Court.)

Coln St. Aldwin's *and* Highworth.

Mr. Juſtice Chapple concurred in Opinion. He agreed to what Mr. Juſtice *Page* had laſt ſaid: And he remarked (as the Lord Chief Juſtice had before done) that the Juſtices found this their Adjudication of the *Place of Settlement*, wholly upon the *tranſmitted* Examination (which they ought not to have admitted at all.) The other Evidence related only to the coming into the Pariſh.

Per Cur.

Both Orders quashed.

No. 45. Rex. *v.* Inhabitants of Uſculm.

Wedneſday 28th *November* 1739.

Reference to the *County* in the *Margin* is ſufficient, in *Orders of Juſtices.*— And the *Ages of Children* need not be ſet out, if there be an expreſs *Adjudication* of their Place of Settlement. But there muſt be both a *Complaint* and an *Adjudication* of the Pauper's being likely to become chargeable; *to the Pariſh complaining.*

On *Tueſday* the 6th of this Month, a Motion was made by Mr. *Hollings*, to quaſh an Order of Removal of *Richard Miniſy*, *Joan* his Wife, and *Jane*, *Richard* and *Henry* their Children, from *Cliſtbydon* to *Uſculm* in *Devonſhire*, and an Order of Seſſions confirming it.

He made three Objections to the original Order.

1*ſt*. Objection. The Direction does not mention in *what County* the Pariſh of *Cilſthydon* lies.

2*d*. The *Ages* of the Children are not mentioned.

3*d*. It is ſaid the Paupers are likely to become chargeable; but does not ſay *to what* Pariſh.

Sir *Thomas Abney* now ſhewed Cauſe.

1*ſt*. "*Devon*" is in the *Margin*: And the Order is directed to the Church-Wardens and Overſeers of *Cliſthydon*, and to the Church-Wardens and Overſeers of *Uſculm*, in the ſaid County: And it appears that the Juſtices are Juſtices of the County of *Devon*. The County being in the *Margin* is ſufficient in an *Order*.

2*d*. The Objection to the Omiſſion of ſpecifying the Ages of the Children, has been often over-ruled, where it is expreſsly adjudged to be the Settlement of the Children themſelves. Now here it is adjudged that "*their*" laſt legal Settlement is in the Pariſh of *Uſculm*.

3*d*. The Adjudication is in this Form—"And whereas upon due "Examination and Inquiry made into the Premiſſes, *it appears to* "*us* and we *accordingly adjudge* that the ſaid, &c, are likely to be-"come *chargeable*." It is not neceſſary to add, to what Pariſh; becauſe it is an Order made upon the Complaint of the Church-Wardens and Overſeers of *Cliſthydon* "*that they were become charge-*"*able to* THAT *Pariſh*."

Mr.

Mr. *Hollings* in Reply—

3*d* Exception—The Juſtices cannot remove Perſons, *unleſs* they are likely to become chargeable to the Pariſh from whence they remove them. *Salk.* 491. Between the Inhabitants of *Suddlecomb* and *Burwaſh*. Here, they do not adjudge "that they are likely to "become chargeable *to the Pariſh of Cliſſhydon:*" Nor do they even adjudge the Complaint to be *true*.

UFCULM and CLISTHYDON.

Lord Chief Juſtice LEE was ſomewhat doubtful, as to the firſt Exception, Whether it was ſufficiently anſwered, or not.

Mr. Juſtice PAGE ſaid, he took it to be ſettled that the County in the Margin is ſufficient, if there be a ſufficient Reference to it. [*V. ante*, No. 12. pa. 43. ſo ſettled.]

See alſo *Poſt.* No. 69. 204. S. P.

LORD CHIEF JUSTICE LEE.

As to the ſecond Objection—The Diſtinction is right, That if it be expreſsly adjudged to be the Settlement *of the Children themſelves*, there is no Need to ſet out their Ages: Otherwiſe, it is neceſſary, in *conſequential* Settlements. [*V. ante*, No. 26. pa. 89.]

See alſo *Ante*, No. 29. *Poſt.* No. 57. 63. S. P.

As to the third Exception—He held, (and the three other Judges concurred with him,) "that it was *fatal*."

A Complaint muſt appear, "of the Paupers being likely to be-"come chargeable *to the Pariſh* from whence removed;" and there muſt be an Adjudication of the Truth of it: For the Juſtices have no Authority without ſuch Complaint and likewiſe an Adjudication of the Truth of it. We can not ſupport an Order by Implication. There is no Neceſſity indeed for any particular Sett or Form of Words: But there muſt be *an Adjudication* of it in *ſome* Words or other. Now here is *no* Adjudication of it at all. Therefore the Order muſt be quaſhed. [*V. ante*, No 12. pa. 43. accord.]

See alſo *Poſt.* No. 46. S. P.

Per Cur.

RULE MADE ABSOLUTE.
For quaſhing both the ORDERS.

Rex *v.* Inhabitants of Netherton in the Pariſh of Cropthorn. No. 46.

The ſame. 28th *Novem.* 1739.

A Motion was made on *Saturday* the 17th of this Month, to quaſh an Order of Seſſions confirming an Order of two Juſtices made for removing *Benjamin Hunt* and *Jane* his Wife from the Townſhip of *Hobleneb* in the Pariſh of *Gladbury* in *Worceſterſhire*, to *Netherton* in the Pariſh of *Croptborn* in the ſaid County.

Order quaſhed for want of an *Adjudication* of the Pauper's being likely to become chargeable *to the Pariſh complaining.—Ante*, No. 12. 45. S. P.

NETHERTON and HOBLENCH.

1*st*. Exception—The Seſſions have amended Matters *not in their Power to amend*. They order the Words—"The Church-Wardens "and Overſeers of the Poor of the *Pariſh* of *Hoblench* to be ſtruck "out;" And the Words—"Overſeers of the Poor of the *Townſhip* "of *Hoblench* in *the Pariſh of Fladbury*"—to be inſerted inſtead thereof throughout the Order of the two Juſtices. *Finch's Law* 80. *Co. Lit.* 115. *b.* 2 *Ventr.* 31. The Act of 5 *G.* 2. *c.* 19. only enables the Juſtices at Seſſions to amend Matters of *Form:* But this is much more than Form only †.

† *Vide Ante*, No. 7. *Poſt*. No. 58.

2*dly*, They have *awarded Coſts:* Whereas, by the Act, none are payable.

3*dly*, There is *no Adjudication* in the original Order, "That the "Paupers are *likely to become chargeable to the Pariſh* from whence they were removed."

The Counſel, who was to have now ſhewn Cauſe, ſaid, he thought it defenſible upon the two former Objections: But he gave it up upon the *third*.* On which Exception

* See the laſt Caſe, No. 45. pa. 139. S.P.

Both ORDERS *were* QUASHED.

Hilary Term

13 Geo. 2. 1739.

No. 47.

Rex *v.* Inhabitants of Southwold.

Tueſday 12th *Feb.* 1739.

ON *Tueſday* the 27th of *November* laſt, a Motion was made to quaſh an Order of Seſſions which vacated an Order of two Juſtices for the Removal of *James Hayes*, *Elizabeth* his Wife, and *Meadow*, *James*, *Thomas*, and *Elizabeth*, their Children from *Southwold* to *Yoxford*.

No Settlement can be gained by a TENEMENT of the Yearly Rent of 10*l*. if the *Value* of it be *leſs*. *V.* Sir *John Strange*, 1127. S. C.

SOUTHWOLD and YOXFORD.

The Order of Seſſions was thus—The Inhabitants of the Pariſh of *Yoxford* in this County moving this Court, by way of Appeal, to be relieved againſt an Order made by *T. C.* Eſq; and *T. N.* Gent. two of his ſaid Majeſty's Juſtices of Peace for the Corporation of *Southwold* aforeſaid in the ſaid County, for the Removal of *James Hayes*, *Elizabeth* his Wife, and *Meadow*, *James*, *Thomas*, and *Elizabeth*, their Children, from the Pariſh of *Southwold* aforeſaid to the Pariſh of *Yoxford* aforeſaid as the Place of their laſt legal Settlement: Upon hearing Counſel on either Side, this Court doth diſcharge the Order made for Removal of the ſaid *James Hayes*, his Wife and Family as aforeſaid; reſerving, in the mean Time, Liberty to the Pariſh of *Southwold* to draw up a ſpecial Order, till the next Seſſion, to be ſettled by Counſel on both Sides and the Juſtices preſent. And this is agreed and conſented to, by the Counſel on both Sides. And in the mean time, the Pauper, his Wife and Family are to remain in the Pariſh of *Southwold* aforeſaid. And it appearing to this Court, that after the ſaid *James Hayes* had gained a legal Settlement at the Pariſh of *Yoxford* aforeſaid, he hired a Houſe in *Southwold*, by Agreement in Writing in the Words following, *to wit*—"Memorandum of an "Agreement between *John Block* of *Hinton* of the one Part, and "*James Hayes* of *Yoxford* on the other Part, witneſſeth, That *John* "*Block* aforeſaid doth lett unto *James Hayes* all the Houſe belonging "to him being in *Southwold* in the County of *Suffolk*, at the yearly "Rent of 10*l.* with all the Land thereunto belonging. The ſaid "*John Block is to build* a Stable convenient for the Houſe, alſo a "Ladeing for Waſhing, and to ſink a Cellar, and to put up a Stove-"Chimney in the little Room. All this to be done between this "and *Michaelmas* next. The ſaid *Block* is to bring as many Flags "as will cover the ſaid Lands, in order to make it a good conveni-"ent Bowling-ground. He, at the Charge of bringing and groun-"dage: And the ſaid *James Hayes* at the cutting and laying. The "ſaid *J. H.* to have the Houſe with the Premiſſes for three Years, "or five, as he ſhall think proper; and to come in at *Midſummer* "next. The Rent to be paid Half-yearly; *viz.* 5*l.* at *Lady-day*, "and the other Half at *Michaelmas*: And all the Rent to be cleared "off at leaving of the Premiſſes. In Witneſs whereof we have ſet "our Hands this 19th Day of *June* 1738. The ſaid *J. B.* to be at "the Charge of a handſome Sign, and to get the Houſe licenſed: "But the ſaid *J. H.* to be at the Charge of the Licence. *John* "*Block*, *James Hayes*. Witneſs, *Benjamin Curtis*, *John Petre*." Which ſaid Houſe and Premiſſes before, and at the Time of making the Articles above recited, were *never worth nor lett for above* 6*l.* 10*s.*

per

SOUTHWOLD *and* YOXFORD.

per Annum: And *none* of the Articles aboveſaid were *performed*, by which the Landlord MIGHT HAVE MADE IT *worth* 10*l*. *a Year*. And the ſaid *James Hayes* did *not lodge one Night in the Houſe*: But his *Wife and Children lodged there five Nights*, and no longer; and his *Goods* were in the ſaid Houſe *above* 40 *Days*, until they were taken and ſold upon an Execution. And that his *Wife and Family continued in the ſaid Town*, and kept the Key of the Houſe till *Michaelmas*. This Court [the Seſſions] is of Opinion, "That by the "Hiring and Facts aforeſaid, the ſaid *James Hayes* did gain Settle-"ment in the the Pariſh of *Southwold* aforeſaid;" and doth accordingly diſcharge the ſaid Order.

It was objected to this Order of Seſſions—1*ſt*, That it don't appear *when* it was made. 2*dly*, That the Seſſions are wrong in their Opinion: For, *no* Settlement was gained in *Southwold*; as the Tenement was not of ten Pounds *per Annum* Value, nor did the Pauper ever reſide in it.

Rule to ſhew Cauſe.

Upon ſhewing Cauſe why this Order of Seſſions ſhould not be quaſhed, (on *Friday* the 25th of *January* laſt,) three Exceptions were made to the original Order of the two Juſtices: *viz.*

*1*ſt*, It does not appear *how* the Man gained a Settlement in *Yoxford*.

2*dly*, The *Ages* of the Children are not ſtated. *M.* 11 *G.* 1. *Rex* v. The Inhabitants of *Trinity* in *Cheſter*.

3*dly*, There is *no Oath* of their Likelyhood to become chargeable. It is only "upon *Complaint* of the Church-wardens and Overſeers;" (not ſaying that it was founded "on Oath.")

* Exceptions to an Order overruled: *Firſt*, for not ſhewing in particular *how* the Settlement was gained; as to which, *Vide Ante*, No. 12. *Secondly*, for not ſpecifying the *Ages of Children*, whoſe Place of Settlement is expreſsly adjudged. And *thirdly*, for not ſtating the Complaint to be *upon Oath*.

Lord Chief Juſtice LEE—This Order of Seſſions is returned in an unuſual Manner. It does not appear whether their Adjudication was or was not made at the *ſame* Seſſions at which the Liberty was reſerved to the Pariſh of *Southwold* to ſtate a Caſe: For no other Court appears upon the Face of the Order to have been holden. But I think we may very well take this to be a State of the Caſe then before them: And this Court muſt determine upon the Facts ſtated.

The Act of 13, 14 *C.* 2. *c.* 12. gives Power to the Juſtices to remove a Perſon coming to ſettle in a Tenement under 10*l*. a Year Value.—Now here the Juſtices have expreſsly returned as a Fact, "That this Tenement was *only* of the Value of 6*l*. 10*s*. a Year," Indeed they ſay that IF the agreed Improvement *had been* made, it MIGHT have been worth 10*l*. a Year. But even that is merely conjectural: The *Fact* returned is, "That it is *only worth* 6*l*. 10*s*."

Southwold and Yoxford.

As to the not ſtating the Ages of *the Children*—It is expreſsly adjudged to be "the Settlement *of* the Children: Therefore their "Ages are *not neceſſary* to be mentioned." *

As to the Complaint not appearing to *be upon Oath*—It is ſaid, "upon *due* Proof made thereof—We do adjudge, &c." which is enough. †

Mr. J. Page looked upon this State of the Caſe as meant to be the true one; and ſaid, he was clear, as to the Merits, "That "the material Thing was the *Value* of the Tenement, not the "Rent reſerved ‡: And he was *as* clear, "That this was not a Te"nement of 10*l.* a Year:" For both at the Time of the Agreement, and alſo at the Time of the Removal, the Value of it was but 6*l.* 10*s.* a Year. And the mere *Covenant* to build is not ſufficient to bring it within the Intent of the Act.

The other two Judges, Mr. Juſtice *Probyn*, and Mr. Juſtice *Chapple*, concurred in the Opinion, "That this was *not* a Tenement of "10*l.* a Year Value;" and "that the Value muſt be eſtimated as "at the Time of the Letting, or at leaſt of the Removal;" and the mere Covenant "to make Improvements *which never were made*, "could not alter the Caſe."

The Court therefore declared againſt the Order of Seſſions, and would have quaſhed it.

But the Counſel for ſupporting it added a *new* Exception to the original Order of the two Juſtices; *viz.* That in the Margin it was "*Town* of *Southwold* in *Suffolk*," (but not named to be a Corporation;) and the Juſtices are only named in the Body of the Order to be "Juſtices of the ſaid *Corporation*."

Town of *S.* in the *Margin* of an Order, and *Juſtices of the ſaid* Corporation in the *Body* of it, is well enough.

The Court thought this Objection of Weight: And, that they might determine upon both Orders together, they put it off for a few Days.

The Anſwer now given to this Objection, by the Counſel for *Southwold*, was, That the Court will take Notice of Corporation-Juſtices, as well as County-Juſtices; becauſe it appears by 43 *Eliz.* that there *are* ſuch Juſtices as Corporation-Juſtices.

The Word "*Corporation*," in the Body of the Order, is the ſame as if it had been expreſſed "*Town Corporate*:" For if it was to be turned into *Latin*, it muſt be "*dictæ villæ corporatæ*," and not "*Corporationis*," or "*Corporis Corporati*." And the Reaſon is becauſe there is no ſuch Thing as a Juſtice of a *Body* Corporate; but of a *Town* Corporate, there is. And the Court, in this Caſe, will intend the *Town of Southwold*, and the *Corporation of Southwold* to be the *ſame*.

In

* *V. Ante*, No. 26. 29. 45. *Poſt*. No. 57. 63. S. P.

† *V. Poſt*. No. 50. Rex *v.* Inhabitants of *Standiſh* cum *Langtree*, S. P.

‡ *V. Poſt*. No. 59. 185. 260. S. P. *accord*. No. 159. *Semb. contra*.

SOUTHWOLD and YOXFORD.

In the Caſe of *The King* and *Meſſenger*, 8 *Geo.* 1. *B. R.* the Court held, "That they ought to take Notice of the Tower-Liberty to be "a diſtinct Liberty, and out of the County at large; and that it "had Juſtices of its own."

Lord Chief Juſtice LEE—Here it is in the Margin of the Order "*Town of Southwold:*" And the Order is made on Complaint "to two Juſtices of the *ſaid Corporation.*" The Queſtion therefore is, What is the true Conſtruction of the Words, "*ſaid Cor-*"*poration;*" whether it may not mean "the *ſaid Corporate Town.*" I think it may here be ſo underſtood.

Mr. J. PAGE thought it would be too ſtrict, if the Court ſhould refuſe underſtanding the Words "*ſaid Corporation*" to mean the ſaid Corporate-Town.

Mr. J. PROBYN—The Queſtion is, Whether it be not a *neceſſary Intendment*, that the *Town in the Margin*, and the *Corporation in the Body* of this Order, are the *ſame*. "Said Corporation," if turned into *Latin*, would be "the ſaid Town-Corporate." I am inclined to think it will do.

Mr. J. CHAPPLE thought they imported the ſame Thing: The Word "*ſaid*" ties it up to be the ſame.

Per Cur.

Seſſions ORDER QUASHED:
Original ORDER CONFIRMED.

Eaſter Term

13 Geo. 2. 1740.

Rex *v.* Inhabitants of North Owram.

No. 48.

Saturday 17th *May* 1740.

An Agreement *before* the Binding, to pay the *Maſter* 30*s. to clothe the Apprentice*, is not within the 8 *Ann. c.* 9. And the *Indenture* is not *void*, for want of inſerting it therein.

V. Sir *John Strange* 1132. S. C. and *Seſſions Caſes*, Ed. 1750 Vol. 2. pa. 196. No. 144.

ON *Friday* the 25th of *January* laſt, a Motion was made by Sir *Thomas Abney*, to quaſh an Order of Seſſions which diſcharged an Order of two Juſtices made for the Removal of *Samuel Spencer* from *North-Owram* to the Townſhip of *Ovenden*, both in the Weſt Riding of *Yorkſhire*.

The Caſe ſtated was thus.—*S. Spencer*, the Father of *S. S.* the Perſon removed, gained his laſt legal Settlement in *Ovenden*; and during ſuch Settlement had a Son born there, named *Samuel*, being the Perſon removed. And afterwards, about the Year 1729, the Mother of the ſaid *S. S.* (whoſe Father was then dead) propoſed to put him an Apprentice to *A. Scot*, then an Inhabitant in *North-Owram*, who *refuſed to take him, becauſe he wanted Cloaths; but propoſed to take him, if they would clothe him, or give him Money to clothe him withal.* The Grandfather ſaid he would do ſo: And it was thereupon agreed, "that the Grandfather *ſhould pay* 30*s. to the Ma-*"*ſter to clothe the Boy withal*; and that the Maſter ſhould take him "as an Apprentice." And in purſuance of that Agreement, the *Maſter did lay out* 30*s. in Clothing for the Boy*. And afterwards an Indenture was drawn and executed by the ſaid *A. Scot* the Maſter, and *S. S.* the Apprentice: And *the* 30*s. agreed to be given and laid out as aforeſaid was* PAID *by the Grandfather to the ſaid Maſter*. And in conſequence thereof, the ſaid Apprentice ſerved his ſaid Maſter under ſuch Indenture and Agreement for ſix Years in *North-Owram*. And in the ſaid Indenture a Covenant was made and mentioned, "for "the ſaid Maſter to find Cloaths for the ſaid Apprentice during all "the ſaid Term;" *but in the ſaid Indenture no Mention was made of the ſaid Sum of* 30*s. ſo agreed to be given as aforeſaid*; neither was *any Duty paid* for the ſame; nor was the *ſaid Indenture ſtampt* ac-

North Owram and Ovenden.

cording to the Statute of 8 Queen *Anne**. Therefore upon Consideration had of the Premiſſes, the Seſſions adjudged the Place of the laſt legal Settlement of the ſaid *Samuel Spencer* to be at *North-Owram*; and do thereupon diſcharge the ſaid Order of Removal.

* *V. c.* 9. § 39.

Two Exceptions were taken by Sir *Thomas Abney* to this Order of Seſſions: 1*ſt*, That the Sum given with him as an Apprentice is not inſerted in the Indenture, in Words at Length; † 2*dly*, That the Indenture is not ſtampt. In Support of this latter Objection, he cited the Caſe of *Cuerden* and *Leyland* ‡. A Rule was made to ſhew Cauſe why the Order of Seſſion ſhould not be quaſhed.

† *V.* § 35.

‡ *Str.* 903. 2 *Seſſ. Caſes*, No. 134. S. C.

On the laſt Day of laſt Term, a Motion was made to enlarge this Rule; and for a Rule upon the Clerk of the Peace, to ſhew Cauſe why he ſhould not amend the Return to the *Certiorari* at his own Expence; he having neglected and refuſed to return up the original Order: Which Rule was accordingly granted.

Lord Chief Juſtice Lee ſaid, the ſame was done in the Caſe of one *Lodge*, Clerk of the Peace for *Norwich*.

On the ſecond Day of the preſent Term, this Rule on the Clerk of the Peace was made abſolute, without Defence; and the principal Rule was enlarged.

Mr. *Strange*, Solicitor General, now ſhewed Cauſe why the Order of Seſſions ſhould not be quaſhed.

He allowed the Caſe of *Cuerden* and *Leyland*, where a Sum of Money was paid to the Maſter as a *Præmium*. But *this* is no *Præmium* to the Maſter, but advanced for clothing the Boy; and by no Means to be conſidered as within the Act of 8 *Ann.*

Sir *Thomas Abney*, on the other Side, relied on the Caſe of *Cuerden* v. *Leyland*, in Support of the ſecond Exception; from which it appears, as he inſiſted, that the Indenture ought to be ſtampt; or elſe it is abſolutely void to all Intents and Purpoſes whatſoever.

He alſo excepted to the Caption; for that it is not ſaid *before whom* the *original* Seſſions were holden; but only before whom the *adjourned* Seſſions were holden.

Lord Chief Juſtice Lee ſaid, the only Queſtion was, whether this 30*s.* be ſuch a Sum as ought to be inſerted in the Indenture, by the Statute of 8 Queen *Ann. c.* 9.

In the Caſe of *Cuerden* and *Leyland*, the Court held themſelves bound to conſider the Service and Binding as ineffectual and *abſolutely* void *to all Intents and Purpoſes*, becauſe the Indenture was *not ſtampt*: But the *not inſerting in Words at* * *Length* the full Sum re-

* *N. B.* The 39th Section (which makes the Indenture abſolutely void) only requires a *true* Inſertion of the full Sum, *&c*; without adding,—"*in Words at Length*."

ceived, or directly or indirectly given contracted or agreed for, ſubjects the Maſter or Miſtreſs to a *Forfeiture*, but does *not make the Indenture void*.

North Owram and Ovenden.

However, upon the State of this Caſe, the Maſter is to be looked upon in no other Condition than if he had been a Stranger employed as an *Agent* by the Grandfather to clothe the Boy: And the Grandfather was obliged to repay him, and did repay him. This Clothing was *before* the Binding: So that it amounts to no more than putting a Boy Apprentice ready clothed. It is not a *Præmium* received by the Maſter. The Statute means Money given directly or indirectly for the *Benefit* of the Maſter. But he has *no Benefit* from this 30 *s*. He was not obliged to clothe the Boy *before* he was his Apprentice: And this Agreement was executed before the Indenture was ſealed.

As to the Caption—It is "at a General Quarter Seſſions, *&c*, "holden at *N. &c*, and from thence continued by Adjournment to "ſuch a Time at ſuch a Place, before ſuch and ſuch Juſtices." It is all connected and coupled together, and muſt be taken to be begun and continued before the ſame Juſtices: We can't preſume that they were different Perſons.

THE THREE OTHER JUDGES were of the ſame Opinion, and gave the ſame Reaſons: Which it is therefore unneceſſary to repeat.

Per Cur.

THE RULE *for quaſhing the* ORDER *of* SESSIONS *muſt be* DISCHARGED.

N. B. The Court do not, in ſuch a Caſe as this, pronounce any Reverſal of the Order of the two Juſtices; becauſe that conſequently *remains* quaſhed, if the Rule for quaſhing the Order of Seſſions be diſcharged.

Vide Poſt. No. 261. S. P.

ORDER *of* SESSIONS AFFIRMED.

Rex *v.* Inhabitants of Haſfield. No. 49.

Monday 19th *May* 1740.

ON *Monday* the 11th of *February* laſt, a Motion was made by Mr. *Yates*, to quaſh an Order of Seſſions confirming an Order of two Juſtices for the Removal of *Benjamin Burford*, an Infant aged about eight Years, and *Mary Burford*, aged about ſix Years, the Son and Daughter of *Jonathan Burford*, deceaſed, from *Tirley* to *Haſfield*, (both in *Glouceſterſhire*.)

An *Infant* is not removeable from a Pariſh, where he has an ESTATE *of Inheritance*.

But it is not neceſſary, that a *Child* ſhould be with its *Grandmother*, for *Nurture*. *V.* Sir *John Strange*, 1131. S. C.

HASFIELD and TIRLEY.

CASE—*Jonathan Burford*, the Father of the ſaid *B.* and *M.* the Paupers, about 20 Years ſince, intermarried with one *Mary Potter*, by whom he had the ſaid *Benjamin* and *Mary*, his only Children: Which *Mary* the Wife was, at the Time of ſuch her Marriage, ſeiſed in Fee of a Meſſuage or Tenement, Garden and Orchard, and about one Acre and a Half of Meadow, in *Tirley*, of the yearly Value of 4 *l.* or thereabouts. That he and his ſaid Wife, for many Years after the ſaid Marriage, and to the Death of his ſaid Wife, lived together in the ſaid Pariſh of *Tirley*, and upon the ſaid Freehold Eſtate; and that the ſaid *B.* and *M.* the Children, were born at *Tirley*, during ſuch their Father and Mother's Reſidence in the ſaid Pariſh of *Tirley* on their ſaid Eſtate. That after the Death of *Mary* the Wife, the ſaid Eſtate *deſcended to the ſaid Benjamin*, as her Son and Heir, ſubject to his ſaid Father's Tenancy by Curteſy. After the Death of the Wife, the Huſband continued, with his ſaid Children, on the ſaid Eſtate at *Tirley* aforeſaid; and afterwards took an Eſtate of about 30 *l.* a Year, in the ſaid Pariſh of *Hasfield*, and removed thither with his ſaid two Children, *where he reſided for one Year and a Half together*, with the ſaid two Children, and then died; on whoſe Death the ſaid *Benjamin*, who was then about ſix Years and a Half old, *became* SEISED IN FEE *of the ſaid Eſtate at* TIRLEY. And he and the ſaid *Mary* his Siſter, being in the ſaid *Pariſh of Tirley, with their Grandmother, their neareſt Relation, above* 40 *Days*, were lately *removed from thence* to *Hasfield* aforeſaid; the ſaid *Benjamin* being about eight Years of Age, and the ſaid *Mary* about ſix Years of Age.

It was objected, on Behalf of the Pariſh of *Hasfield*, that *neither* of theſe two Children were liable to be removed from *Tirley*; the Boy having an Eſtate of Inheritance there; and the Girl being there with her Grandmother, for *Nurture*.

Upon ſhewing Cauſe now, Mr. *Wheat* endeavoured to ſupport the Order, as to *both* the Children. But,

Lord Chief Juſtice LEE made a Difference between the Caſes of the two Children. *Benjamin* is ſeiſed in Fee of an Eſtate in *Tirley:* And it is not material *quo animo* he came into that Pariſh; or *how long* he has been in it. It is not a Caſe within the Statute of 13 & 14 *C.* 2. *c.* 12. becauſe having an Eſtate of his own in the Pariſh, he is not removable FROM it. It is not like the Caſe where a Man is *to gain a Settlement* by *reſiding* 40 *Days* in a Place from whence he is irremovable. This laſt was the Caſe of *Sowton* and *Sydbury*, * where the Difficulty was upon the Reſidence 40 Days in

* *V. Ante*, No. 40.

a

a Place where the Man was to *gain* a Settlement in Reſpect of his Freehold. But I think it clear, that this *Benjamin B.* could NOT *be removed* FROM his Freehold.

Mary's Caſe depends only upon the Tenderneſs of her Years. For ſhe had gained a Settlement at *Haſfield* as Part of her Father's Family; and conſequently had *diſcharged* her *former* Settlement at *Tirley*.

I do not know that the Caſe of *Nurture* has been extended further than to the Caſe of a *Mother*, whoſe *natural* Aſſiſtance is to be expected: But the Caſe is not the ſame as to the Grandmother. Tho' the Grandmother indeed is liable *to allow* towards the Maintenance of her Grandchild, if able; yet *that* is only in Diſcharge of the Child's Pariſh, to which the Child is burthenſome: But it is not neceſſary that the Child ſhould be *with her* in her *own* Pariſh, for *Nurture*.

Therefore the Order is good as to the Daughter.

Mr. J. PROBYN and Mr. J. CHAPPLE (*Page abſent*) concurred, that *Benjamin* could not be removed *from* the Pariſh where he had a *Freehold*: And they concurred likewiſe with his Lordſhip as to the Girl.

Per Cur.

ORDER QUASHED *as to the Removal of Benjamin*:
CONFIRMED *as to the Removal of Mary.*

Trinity

Trinity Term

13 & 14 Geo. 2. 1740.

No. 50.

Rex v. Inhabitants of Standiſh cum Langtree.

Thurſday 12th *June* 1740.

ON *Friday* 16th of *May* laſt, a Motion was made by Mr. *Clayton*, to quaſh an Order of Seſſions confirming an Order of two Juſtices made for the Removal of *Mary Kennedy*, otherwiſe *Keys*, and *Luke* her Child, from the Townſhip of *Upholland*, in the Pariſh of *Wigan*, to the Townſhip of *Standiſh with Langtree*, in *Lancaſhire*.

An Order of *two* Juſtices muſt ſhew that *one* of them is of the Quorum: But it is not neceſſary to ſtate, that the *Complaint* was made *upon Oath*.

1*ſt* Objection. It does not appear, that either of the two Juſtices was of the *Quorum*; It is only—"*And whereof*, in and for the ſaid "County."

2*d* Objection. It does not appear, whether ſhe is a married Woman.

3*d* Objection. The *Complaint* don't appear to have been made on *Oath*.

In Anſwer to the firſt, *Regina* v. *Inhabitants of Long-Bolton*, *M.* 7 *Anne* was cited; where "*Quorum unus*" was holden ſufficient.

To the ſecond it was ſaid, That the Juſtices have adjudged her to be ſettled in *Standiſh cum Langtree*; and the Court will *intend* her a *ſingle* Woman.

To the third—No Oath is neceſſary *.

* *Vide Ante*, No. 47. S. P.

IN REPLY, The Caſe of *Rex* v. *The Inhabitants of Great-Mitton*, in *Yorkſhire*, *M.* 11 *G.* 2. was cited in Support of the firſt Objection; Which was exactly the ſame Caſe with the preſent.†

THE COURT unanimouſly quaſhed the Orders, upon the *firſt* Exception. As to the third Objection,—They ſaid, that the Statute does not require a Complaint *upon Oath*.

BOTH ORDERS QUASHED.

† *N. B.* I omitted to inſert it, becauſe I thought it ſo very plain a Caſe: And ſo the Court treated it.

Rex

Rex *v.* Inhabitants of East-Knoyle.

No. 51.

The ſame Day.

PAROL *Evidence* admitted of an *Indenture* not produced.

ON *Saturday* the 10th of *May* laſt, a Motion was made by Mr. *Gundry*, to quaſh an Order of Seſſions confirming an Order of two Juſtices made for the Removal of *Anne Bowles*, the Wife of *James Bowles*, and *George* their Son aged five Weeks, from *Teffont Magna* to *Eaſt Knoyle* in *Wiltſhire*, as the laſt legal Place of Settlement of the ſaid *James Bowles* the Huſband, who was run away and had left his ſaid Wife and Child in *Teffont Magna*.

The Seſſions-Order thus ſtated the Caſe—And it *appearing to this Court* upon the Evidence now given, that the ſaid *James Bowles was bound an Apprentice by Indentures* to one *William Wilkins* of the Pariſh of *Eaſt Knoyle* aforeſaid *Cordwainer* (which is above 50 Miles from *London*;) and *that he ſerved three Years at Eaſt-Knoyle aforeſaid under the ſaid Apprenticeſhip*; at which Time the ſaid *William Wilkins*, the Maſter, died; and that the Sum of 5 *l.* (being the full Conſideration-Money) was paid by his Father with the ſaid Apprentice for ſuch his Binding: *But the Indentures of Apprenticeſhip were not produced; neither did it appear to this Court whether the Duty of 6 d. in the Pound directed to be paid by the Statute* made in the 8th Year of the Reign of the late Queen *Anne*, *c.* 9. *was paid*, or *whether the ſaid Indentures were ſtampt*, as the ſaid Act requires.

Objection—It appears that the Juſtices have admitted and gone upon *Evidence* which was *not legal*. They have admitted parol Evidence of an Indenture; which they ſtate *not to have been produced*, and have not given any Reaſon why it was not produced; nor did it appear to them that the Duty was paid, or whether the Indentures were ſtampt according to 8 *Ann. cap.* 9.

But Mr. J. PAGE and Mr. J. CHAPPLE (the only two Judges in Court) over-ruled the Objection, and refuſed to make a Rule to ſhew Cauſe. For it is ſtated that *it appeared to* THEM that he was *bound* an Apprentice, *&c.* And it is not neceſſary that this Evidence ſhould appear to *us*. Perhaps the Indenture was *loſt*:—And in that Caſe, could the Juſtices receive no other Evidence of the Binding? And as to the Duty and the Stamp—they do not ſay the Duty was *not* paid; or that the Indenture was *not* ſtampt.

The Motion was DENIED.

A Motion was now made to confirm the Orders, unleſs Cauſe was ſhewn before the End of the Term.

RULE—That the Orders be affirmed, unleſs Cauſe be ſhewn to the contrary before the End of this Term.

Vide Poſt. No. 104. *page* 735. *contra.*

Rex

No. 52.

Rex *v.* Inhabitants of King's Norton.

Thurſday 19th *June* 1740.

HIRING for a Year, to *work* at a certain Rate, will gain a Settlement.

V. Sir *John Strange* 1139. 2 *Seſſ. Caſ.* 146. S. C.

ON *Saturday* the 17th of *May* laſt, a Motion was made by * Sir *John Strange*, to quaſh an Order of Seſſions reverſing an Order of two Juſtices made for the Removal of *Mary Calcot* from *King's Norton* in *Worceſterſhire* to *Cambden* in *Glouceſterſhire*.

The Order of Seſſions ſtates, that it appeared to them upon the Examination of the ſaid *M. C.* taken upon her Oath in Court, that ſhe was upon *All Saints* Day in the Year of our Lord 1735, hired with *John Ellis* of *Cambden*, Chapman, *for a Year*, to ſpin Wick-Yarn, at the Rate of 1 *s.* 6 *d.* a ſtone; and that ſhe was to *provide herſelf with Meat, Drink, Waſhing and Lodging where ſhe pleaſed*: And that ſhe *ſpun for him the whole Year*; and *lodged in her ſaid Maſter's Houſe*, and *boarded with him at Cambden*; and received 1 *s.* 6 *d.* a Stone for her Work; allowing her Maſter 2 *s.* a Week for her Lodging and Board. And upon her Examination ſhe ſaid that by her ſaid Contract as aforeſaid SHE THOUGHT *ſhe was not at Liberty to work for any* OTHER *Maſter: But* SHE THOUGHT *that ſhe was at Liberty to* PLAY *or be* ABSENT *from her Work, as long as ſhe pleaſed; being to be paid at a* CERTAIN RATE *for her Work done.* Wherefore it is the Opinion of the Seſſions "that the ſaid Hiring and Ser-"vice aforeſaid was *not* ſufficient to gain the ſaid *Mary Calcot* a Set-"tlement in the Pariſh of *Cambden*: And accordingly they *reverſe* "the Order of Removal."

RULE *to ſhew* CAUSE.

On ſhewing Cauſe, the only Queſtion was, Whether *this* Hiring and Service was *ſufficient* to gain her a Settlement in *Cambden*.

Lord Chief Juſtice LEE thought it plainly a *good* Settlement in *Cambden*. For here is a *Hiring for a Year, and a continuing in the ſame Service for a Year*: Which are undoubtedly ſufficient to gain a Settlement.

Mr. J. PAGE and Mr. J. PROBYN were of the ſame Opinion, for the ſame Reaſon.

And they all agreed that it was not material WHAT *the Service was*.

Mr. J. CHAPPLE alſo concurred; and obſerved that the Liberty ſhe thought ſhe had, of playing and being abſent as long as ſhe pleaſed, depended upon her *own Apprehenſion* only; but was *no Part of the Contract*.

Per

* He was knighted on the *Monday* preceding (12th *May* 1740.) being then his Majeſty's Solicitor General, and Recorder of *London*.

Per Cur. unanimouſly and clearly,
ORDER *of Seſſions* QUASHED.
ORDER *of two Juſtices* AFFIRMED.

KING'S NORTON *and* CAMDEN.

V. Poſt. No. 165. *Rex* v. *Inhabitants of St. Peter's, Dorcheſter,* and *Poſt.* No. 146. See alſo *Dougl.* 319. S. P. *accord. Rex* v. *Inhabitants of Macclesfield,* and the Caſes there cited, in Page 459.

Michaelmas Term

14 Geo. 2. 1740.

Rex v. Inhabitants of Ironacton.

No. 53.

Saturday 25th *October* 1740.

The *Wife* and *Children* may be removed, *without* the *Huſband.*

Vide Poſt. No. 57. *Dougl.* 45-6. S. P.

UPON Complaint made by the Church-Wardens and Overſeers of *Painewick,* "That *Mary* the Wife of *William King* and "eight of their Children (naming them) had intruded into *Paine-* "*wick, &c.*" Two Juſtices removed them from thence to *Iron-acton*; which they adjudged to be the laſt legal Settlement of the Huſband: And, upon Appeal, the Seſſions confirmed the Order.

A Motion was now made by Mr. *Yates,* to quaſh theſe Orders. And his Objection was, That the Wife and Children are removed, *without the Huſband:* And that this amounts to a Divorce between the Man and his Wife. But

THE COURT over-ruled the Objection.

How does it appear (they aſked him) that the Huſband *was not at Ironacton,* at that Time? We can not *ſuppoſe* it to be wrong, unleſs it *appears* ſo: The Suppoſition is rather, that he *is* at the Place where he is adjudged to be laſt legally ſettled. The Intruſion complained of, into *Painewick,* is only *by the Wife and Children.* How could the Juſtices remove the *Huſband,* when he was *not complained of?* The Order is right.

MOTION DENIED.

No. 54.

Rex *v.* Inhabitants of Petham.

Saturday 15th *Novem.* 1740.

An *Apprentice aſſigned* by a *certificate-man*, to a Maſter living in *another* Pariſh gains a Settlement.

V. Sir *John Strange* 1147. S. C. alſo *Seſſions Caſes*, Ed. 1750. Vol. 2. pa. 209. No. 149. S. C.

TWO Juſtices removed *Thomas Sutton* and *Mary* his Wife, and *Mary* their Child, from *Dymchurch* to *Petham* (both in *Kent*:) And the Seſſions confirmed it.

Caſe—*William Sutton*, the Father of *Thomas Sutton*, being legally ſettled in *Petham*, removed with his Family into the Pariſh of *Lydd*, and dwelt there under a Certificate from the Pariſh of *Petham*; but never gained any Settlement there or elſewhere, after his Removal from *Petham*. During the Time that *William Sutton* and his Family dwelt in *Lydd* under the Certificate, the ſaid *Thomas Sutton* was born in *Lydd*. The ſaid *Thomas Sutton*, not having gained any Settlement in his own Right, by Indenture duly ſtampt and executed, bearing Date the 10th of *June*, 1721, bound himſelf an Apprentice for the Term of ſeven Years from the Day of the Date of the ſaid Indenture, unto *Thomas Mayborne*, a Blackſmith, then reſiding in the Pariſh of *Tenterden*. At the Time of the ſaid Binding, and alſo during the whole Time the ſaid *Thomas Sutton* lived with the ſaid *Thomas Mayborne* as his Apprentice under the ſaid Indenture, the ſaid *Thomas Mayborne* was a CERTIFICATE-PERSON under a Certificate from the Pariſh of *Sellinge* to the Pariſh of *Tenterden*. The ſaid *Thomas Sutton* did dwell with and ſerve the ſaid *Thomas Mayborne* in *Tenterden* as his Apprentice under the ſaid Indenture, from the Day of the Date of the ſaid Indenture unto the 30th of *Auguſt* 1723: And on the ſaid 30th of *Auguſt*, the ſaid *Thomas Mayborne*, being then a CERTIFICATE-PERSON as aforeſaid, by *his Deed-Poll* by him duly executed, *did give, grant*, ASSIGN AND SET OVER *unto John Sutton of the ſaid Pariſh of* LYDD, Blackſmith, his Right, Title, Term of Years to come, Claim, Intereſt, Service and Demand whatſoever, which he the ſaid *Thomas Mayborne* had in or to the ſaid *Thomas Sutton* by Virtue of the ſaid Indenture; the ſaid *Thomas Mayborne* thereby granting unto the ſaid *John Sutton* his full Power and lawful Authority for the having, keeping and enjoying his ſaid Apprentice the ſaid *Thomas Sutton* for and during the ſaid Term of Years then to come and unexpired. The ſaid *Thomas Sutton did conſent to the ſaid Aſſignment, and did dwell with and ſerve the ſaid John Sutton as his Apprentice under the ſaid Deed-Poll, in the ſaid Pariſh of* LYDD, *from the Date of the ſaid Deed-Poll, during the Reſt of the ſaid Term of ſeven Years* for which he was bound Apprentice as aforeſaid. That the ſaid *John Sutton*, at the Time of the Execution of the ſaid Deed-Poll by the ſaid *Thomas Mayborne*, and during all the Time the

the ſaid *Thomas Sutton* dwelt with and ſerved him the ſaid *John Sutton* as his Apprentice under the ſaid Deed-Poll, *was a Pariſhioner legally ſettled in the ſaid Pariſh of* LYDD, and *not* a Certificate-Perſon. Upon the Expiration of the ſaid Term of ſeven Years, the ſaid *Thomas Sutton* went into and reſided in *Dymchurch*; but never gained any Settlement there: And being likely to become chargeable to *Dymchurch*, was (together with his Wife and Child) removed by the ſaid Order of two Juſtices, from *Dymchurch* to *Petham* as the Place of his laſt legal Settlement. The ſaid *Thomas Mayborne*, after the granting the ſaid Certificate by the Pariſh of *Sellinge* to the Pariſh of *Tenterden* for him the ſaid *Thomas Mayborne*, never did any Act to avoid the ſaid Certificate. *Mary* the Child of *Thomas Sutton*, at the Time of making the ſaid Order of Removal and of the ſaid Removal, was of the Age of three Months, and no more. Whereupon the Seſſions confirm the Order of the two Juſtices. PETHAM and DYMCHURCH.

On *Wedneſday* the 11th of *June* laſt, a Motion was made by Sir *John Strange*, to quaſh theſe Orders. He inſiſted that the Apprentice was *ſettled in* LYDD, and not in *Petham*; having been by his own Conſent aſſigned to an Inhabitant of *Lydd*, and *ſerved him there* ſix Years under that Aſſignment.

Rule to ſhew Cauſe.

Upon ſhewing Cauſe now, the Queſtion was, Whether the Pauper gained a Settlement in *Lydd*, by ſerving out his Apprenticeſhip there under this Aſſignment.

It depended upon the Conſtruction of the Statute of 12 *Ann. ſtat.* 1. *c.* 18. *ſ.* 2. which, after reciting the *Stat.* of 8 & 9 *W.* 3. *c.* 30. and the Inconveniences to Pariſhes from the Apprentices and Servants of Certificate-Men, enacts, "That ſuch Apprentice by Virtue of "ſuch Apprenticeſhip or Binding to ſuch Perſon ſhall not gain or "be adjudged to have any Settlement in SUCH Pariſh, Townſhip, "or Place, by Reaſon of ſuch Apprenticeſhip or Binding: But every "ſuch Apprentice ſhall have his Settlement in ſuch Pariſh, Town-"ſhip, or Place, *as if he or they had not been bound Apprentice to ſuch "Perſon* as aforeſaid." And it was very well argued by Mr. *Knowler*. in Support of Orders; and Sir *John Strange* and Mr. *Hardres*, againſt them.

Lord Chief Juſtice LEE. There is no Doubt but that if the *original* Binding had not been to a *Certificate-Man*, the Service in *Lydd* under the *Aſſignment* would have gained a Settlement. This has been often determined *.

But the preſent Queſtion wholly depends on the Conſtruction that ſhall be put on 12 *Ann. c.* 18. before which Statute the Pa-

* *V. Anſt.* No. 5. and No. 43.

PETHAM and DYMCHURCH.

riſh was obliged to receive a Certificate-Man; and it was found that an irremovable Certificate-Man brought Hardſhips on Pariſhes, by taking Apprentices and Servants; and therefore it enacts that ſuch Servants or Apprentices ſhall not be ſettled in *ſuch* Pariſh wherein the Certificate-Man lived.

It appears very ſtrongly to my Apprehenſion, that as the Preamble and Purview of the Act relate only to the Security of the *Pariſh where the Certificate-Man lived*, it meant only to provide for the Eaſe of *that* Pariſh, for whoſe Benefit it was made.

The Conſtruction put upon the Word "*ſuch*," in the Inſtances cited by Counſel for the Orders, does not come up to *this*. That Conſtruction was agreeable to the Intention of *thoſe* Statutes. As in Caſe of Certificate-Men's gaining Settlements; the Court conſtrues Acts favourably for *gaining* Settlements; and the Relative "ſuch" was conſtrued accordingly.

So on the other Act of Parliament, about gaining a Settlement by *Service*. If a Perſon be hired for a Year, and ſerves for a Year, *ſuch* Service ſhall gain a Settlement, though it be not an entire Service under the very ſame Hiring for a Year. There muſt, however, be *a* Hiring for a Year: And if there be alſo a Service for a Year, it is ſufficient; becauſe it anſwers the Credit given to the Man by taking him into a Service for a Year; and alſo anſwers the Benefit which the Pariſh has received from his Labour for a Year.

The End of *this* Act ſeems fully anſwered, by ſecuring the *Pariſh which is obliged to receive the Certificate-Man*: And there is no Reaſon to extend it further.

Therefore I think this Man is *ſettled at* LYDD, *under the Aſſignment*.

THE THREE OTHER JUDGES concurred with the Chief Juſtice in Opinion; and ſaid that the *Grievance* which ſubſiſted *before* the Act of 12 *Ann.* ought to be conſidered upon this Queſtion concerning the Conſtruction of it. And that Grievance was the Charge brought on Pariſhes *obliged* to receive Perſons certificated from their own Pariſh, by ſuch Certificate-Men's taking Apprentices and Servants, and ſo bringing a Burden upon them. This was the Miſchief intended to be remedied.

But *another* Pariſh was not within this Grievance. Therefore the Act had no Occaſion to provide for *them*. If the Legiſlature had intended it, they might have made the Binding void. But this it has not done; it only enervates it in *one* particular Inſtance; *viz.* with Regard to gaining a Settlement in *that* Pariſh: But with Regard to a *third* Pariſh it remains a good Binding, as it was before the Act.

Act. And, conſequently, if it is a good Binding, and if the Apprenticeſhip is not void, the Aſſignment over is as good as it was before at Common Law; and there is no Difference whether he was a Certificate-man or not. And no Injury is done to the Pariſh of *Lydd:* For the Pauper comes into *that* Pariſh under the Aſſignment, juſt in the ſame Manner as if he had come into it under an original Binding.

PETHAM and DRUCQUER.

And they held that thoſe Acts of Parliament ought to receive a *liberal* Conſtruction, in *Favour* of Settlements.

Mr. Juſtice CHAPPLE obſerved that the Words of the Act of 12 *Ann.* "that the Apprentice ſhall have his Settlement in ſuch "Place *as if he had not been bound,*" muſt be taken to relate to *that* Pariſh *only*, where the Certificate-man lived.

Per Cur.—

RULE *made* ABSOLUTE.
Both ORDERS QUASHED.

Rex *v.* Inhabitants of Newton.

No. 55.

Friday 28th *Nov.* 1740.

Hiring and *Service* from *the Wedneſday after Martinmas* till *Martinmas* following, will not gain a Settlement.

TWO Juſtices made an Order for the Removal of *Abraham Greaves, Elizabeth* his Wife, and *Ann* their Daughter, from the Townſhip of *Gouldeſborough* to the Townſhip of *Newton* in the *Willows*, otherwiſe *Newton-Kine*; (both in the Weſt-Riding of *Yorkſhire*:) And the Seſſions, upon Appeal, confirmed this Order.

Caſe.—*Abraham Greaves*, the Perſon removed, was in the Year 1733, on *Wedneſday after Martinmas-day*, being the FOURTEENTH *Day of November and the Day on which the firſt Statutes for the public Hiring of Servants was held* at *Knareſborough* in the ſaid Riding, hired by *Richard Ellerbeck of Newton* to ſerve him *from that Time till Martinmas-day following:* And a *Fortnight after*, and in Purſuance of that Hiring, he went into the Service of the ſaid *Ellerbeck*, and remained there *till* ſome Time in the Spring following, when by Accident he *became lame*, and *by his Maſter's Conſent left the Service for ſome Weeks, and then returned and ſtayed till the* TENTH *Day of November following*, being the *Day before Martinmas-day* 1734; on which Day his Maſter and he accounted, and he left his Maſter's Service. On the *Wedneſday* following he went to the firſt Statutes at *Knareſborough* aforeſaid; where he contracted to ſerve one *John Houſeman*, till *Martinmas* following, and received 2 *s.* 6 *d.* as Earneſt:

NEWTON and GOULDESBOROUGH.

But before he entered into his ſaid Service, *viz.* on the *Sunday* following, the ſaid *Houſeman* ſent him Word "he was otherwiſe provided;" and diſcharged him of his Contract. The ſaid *Abraham* on the *Thurſday* following, being the 21ſt Day of *November*, went to *Wetherby* in the ſaid Riding, in which Town two public Statutes for the Hiring of Servants are and Time out of Mind have been annually held; one, on the firſt *Thurſday* after *Martinmas*; and the other, (commonly called the latter Statutes or latter Club-day,) on the ſecond *Thurſday* after *Martinmas-day*; and on the ſaid latter Club-day, being the ſaid 21ſt Day of *November*, was hired by *John Simpſon*, an Inhabitant in *Gouldeſborough*, to ſerve till *Martinmas* then next. That in Purſuance of ſuch Hiring, he immediately entered into the Service of the ſaid *Simpſon*, and ſerved him till the *Martinmas-day* following, in the Townſhip of *Gouldeſborough*. The Seſſions were of Opinion "that *Abraham* did not gain any Settlement in *Gouldeſborough* by the ſaid Hiring with *Simpſon*; but that he *gained* a "Settlement at *Newton*, by Virtue of his *Hiring to and Service with* "*Ellerbeck*;" and adjudged accordingly, "that his laſt legal Settlement was at *Newton*;" and confirmed the Order of the two Juſtices.

On *Saturday* the 17th of *May* laſt, a Motion was made, by Mr. *Fawkes*, to quaſh theſe Orders; for that there was *neither a Hiring for a Year nor a Service for a Year*. And they are, *both* of them, neceſſary: It has been ſeveral Times ſo adjudged.

Mr. J. PAGE ſaid, So it had: Yet, he was afraid, moſt of the Hirings at Statutes throughout *England* were of this Kind.

RULE *to ſhew* CAUSE.

Upon ſhewing Cauſe (on *Wedneſday* 11 *June*,)

Mr. Juſtice PROBYN obſerved that the Caſe does not ſtate any *Cuſtom* about theſe Statute-fairs. But he had a Notion that there had been Caſes where the Cuſtom and Uſage of the Country had been ſtated, "to hire from the Statute-fair till *Martinmas* following;" and that ſuch Hirings purſuant to the Cuſtom had been allowed of.

But Mr. *Fawkes* alledged that there were Caſes which adjudged "that if there was ſuch a Cuſtom, it could not control the Act of "Parliament:" And he particularly named one, *viz.* *Rex* v. *Inhabitants of South Cerney*, *Tr.* 5 & 6 *G.* 2. [v. *Seſſions Caſes*, Ed. 1750, Vol. 1. pa. 174, No. 156.]

It was now ADJOURNED.

It

It came on again upon *Saturday* 21 of *June*; when an Objection was made to the *Certiorari*, by Mr. *Denison*, of Counsel for the Township of *Gouldesborough*, that it did not appear to be *properly returned*: The Return was only signed *R. Whitton*; not saying *who* or *what* he was; or that he had any proper *Authority* to return it. It is not even prefaced to be "*the Answer* of such a one:" (Which is the usual Method.) NEWTON *and* GOULDESBOROUGH.

Mr. Justice PROBYN.—It ought to be returned by the Persons to whom it is directed: And it is directed to the Justices of the Peace.

Lord Chief Justice LEE directed other Returns to be looked into: Which appeared to run thus—"*The Answer of* A. B. *and* "C. D. *two of the Justices within named*;" and then told the Counsel who were for quashing the Orders, They had better look into it, and see if they could support it. It was therefore again

ADJOURNED.

But finding it could not be supported, they (on *Wednesday* 25th of *June*) moved to quash their own *Certiorari:* Which was granted.

On the first Day of this Term, they moved for a *new* one. But this was opposed. For

Note—On the 24th of *June* last, the new Act * concerning *Certioraris* to remove Orders of *Justices*, &c. took place: Which limits them to be moved for within six Calendar Months, and directs six Days notice in Writing to be given to the Justices. And Notice had been here given, in the Vacation, to two Justices who were at the Sessions: But none was given to the two Justices who *made the original* Order. Wherefore Mr. J. *Chapple* (to whom Application for a new *Certiorari* was made in the Vacation) would only grant his *Fiat* for a *Certiorari* to remove the Order of *Sessions:* But he referred them to a Motion in Court, as to granting a new *Certiorari* to remove the *original* Order of the two Justices. * 13 G. 2. c. 18. sect. 5.

Note also—This Application to the Court was not within six Months: But the original Application to Mr. Justice *Chapple* was within the six Months, (though upon the very last Day of them.)

Upon shewing Cause, on *Monday* the 10th of this Month, against this Rule obtained on the first Day of this Term, the Clause in the Act * of the last Session of Parliament was insisted on by Mr. *Denison*; which makes two Things previously necessary before the Court * 13 G. 2. c. 18. sect. 5.

issues

Newton and Gouldsborough.

iſſues a *Certiorari*; *viz.* (1ſt,) That it be iſſued within ſix Calendar Months after the Order is made: (For the Clauſe is prohibitory that the Court *ſhall not* otherwiſe grant it; and therefore there ought to be an Affidavit that the Order was made within ſix Calendar Months.) (2dly,) There muſt be ſix Days Notice given to the Juſtices who made the Order.

The Court thought this ſuch a Caſe as they ought to aſſiſt if they could. Here was a regular Application to a Judge within Time, and with due Notice, as to the Order of *Seſſions*; and he has granted a *Fiat* for a *Certiorari* to return it. So that you are in Poſſeſſion already of a *Fiat* as to the *Order of Seſſions*. And when *that* Order ſhall be before the Court, we may find a Method of having the original Order before us, without a new *Certiorari*, or without any Infringement of the Act. If the *Certiorari* commands the Juſtices to return the Seſſions Order, *cum omnibus eum tangentibus*, we ſhall ſee what Return they will make to it.

Therefore you had better take out your *Certiorari* upon the *Fiat* you are already in Poſſeſſion of: And there don't ſeem to be any Need of the new one which you now apply for.

They accordingly did ſo. And on *Wedneſday* the 19th of this Month, (both Orders being then returned up,) a Motion was made by Sir *John Strange*, to quaſh them; and a Rule granted, to ſhew Cauſe why they ſhould not be quaſhed.

It was now moved, by Sir *John Strange* and Mr. *Fawkes*, to make this Rule abſolute: There was neither a Hiring for a Year, nor a Service for a Year, in *Newton*.

Mr. Juſtice Page ſaid he believed great Numbers of Servants were hired in many Countries (and he was ſure of it in his own) *only from the Statute-fair*.

Lord Chief Juſtice Lee ſaid it could never be ſupported to be a Settlement in *Newton*; as there was neither * a Hiring for a Year nor a Service for a Year: And after having ſpoken to Mr. Juſtice *Chapple* and *Wright*—

The Court †, without reading the Orders, or Mr. *Deniſon's* attempting any Argument againſt it, made the

Rule abſolute *for quaſhing both* Orders.

* *V. Rex.* v. *Inhabitants of Weſt Woodhay*, H. 5. G. 1. *Str.* 143.

† *Mr. Juſtice* Wright was now come upon the Bench. *V.* Poſt. pa. 166, (at the End of No. 58.)

Vide Poſt. No. 208. 222. *contra. Dougl.* 423. *accord.* and the Caſe of *the King againſt the Inhabitants of Syderton*, or *Syderſtone cum Bermer* (E. 17 Geo. 3.) there cited *in notis*, and reported in 3 *Burn. Ed.* 1785. *p.* 426. *contra.*

Hilary

Hilary Term

14 Geo. 2. 1740.

Rex *v.* Inhabitants of Clifthydon.

No. 56.

Saturday 24th *Jan.* 1740.

The *Maſter* being *certificated*, during the *Apprenticeſhip*, will not prevent the *Apprentice* from gaining a Settlement.

TWO Juſtices removed *Richard Miniſy*, *Joan* his Wife, and *Jenny*, *Richard*, *Henry* and *Ann*, their Children, from *Chſt-hydon* to *Broadhembury*: The Seſſions, upon Appeal, reverſed the Order of the two Juſtices.

CASE ſtated.—*R. M.* was bound by Indenture bearing Date 1 *Jan.* 1716, to *J. Weſcott*, for ſeven Years, in *Uffculm*; and lived there with him about two Years: At which Time, *J. W.* went into *Broadhembury*, and carried his ſaid Apprentice with him; where he lived with his ſaid Maſter about two or three Years. Then his ſaid Maſter put him to live with one *T.* at *B.* in *Tallaton*; where he lived about three Months, and then returned to his ſaid Maſter in *Broadhembury*, and tarried with him about one Week; when his Maſter ordered him to go and live with one *Perrot* in *Broadhembury*; and there he continued to live about the Space of three Months; at which Time *Weſcott* died: But the Term was not then expired. The ſaid *Miniſy* never lived with any Perſon, after the Death of his ſaid Maſter, under the ſaid Indenture. And it appearing unto this Court that the ſaid *Perrot* came into the ſaid Pariſh of *Broadhembury* with a Certificate from the Pariſh of *Ottery St. Mary*, dated the 8th Day of *April* 1724, duly allowed by two Juſtices as the law requireth, and there lived under the ſaid Certificate;—this Court being of Opinion "that the ſaid *Miniſy's* living with the ſaid *Perrot* as afore-"ſaid, did *not* gain any Settlement in *Broadhembury*," therefore they vacate the Order of the two Juſtices.

On *Thurſday* 27th *Nov.* laſt, a Motion was made to quaſh this Order of Seſſions: And thereupon, a Rule to ſhew Cauſe.

The Objection was that the Maſter was not a Certificate-man *during any Time of the Apprenticeſhip*: And his being ſo *afterwards* was immaterial.

The RULE *was now made* ABSOLUTE, *without Defence.*

No. 57.

Monday 9th *Feb.* 1740.

Rex *v.* Inhabitants of Higher Walton.

The Court will not intend any Thing to *vitiate* an Order.

A Motion was made, by Mr. *Wilbraham* and Mr. *Robinſon* Recorder of *Scarborough*, to quaſh an Order of Seſſions confirming an Order of two Juſtices for the Removal of *Mary Bennet* the Wife of *Samuel Bennet*, and her Daughter, to *Higher Walton*: Which they adjudged to be *their* laſt legal Settlement.

The firſt Objection was, that it does not appear whether it was this Woman's Settlement in her *own* Right, or in the Right of her *Huſband:* And nothing ſhall be intended. Now, if it was not her Settlement in Right of her Huſband, the Juſtices had no Power to ſend her thither.

The ſecond—That the *Child's Age* is not mentioned. But

Per Cur.—(1ſt,) It is adjudged to be her laſt legal Settlement*. And ſhe *could not* be ſettled at any other Place than where her *Huſband* was ſettled. And we are not to intend any Thing to *vitiate* the Order: Therefore we can not intend, "that the Huſ-"band's Settlement was *not* at *Higher Walton*."

2dly, As they expreſsly adjudge the Daughter to be ſettled there, there is no Need to ſpecify her Age.

* *V. Ante* No. 53. *Dougl.* 45. 6. S. P. The Age of a *Child* need not be ſpecified, if the Place of its Settlement be expreſsly adjudged.

MOTION DENIED.

Ante No. 26. 29. 45. *Poſt.* No. 63. S. P.

Eaſter Term 14 Geo. 2. 1741.

None, of this Term.

Trinity

Trinity Term

14 & 15 Geo. 2. 1741.

Rex *v.* Inhabitants of Great Bedwin. No. 58.

Tueſday 16th *June* 1741.

An Order cannot be *amended* in Matters of SUBSTANCE, which require *Examination*; but only in Matters of FORM, appearing on the Face of it.

V. Sir *John Strange* 1158. and *Seſſ. Caſes*, Ed. 1750. Vol. 2. pa. 190. No. 142. S. C.

ON *Wedneſday* the 11th of *February* laſt, a Motion was made, by Mr. *Henley* and Mr. *Gundry*, and on *Monday* 20th of *April* 1741, renewed by Mr. *Deniſon*, to quaſh an Order of Seſſions confirming an Order of two Juſtices for the Removal of *Charles May*, *Mary* his Wife, and *Joan*, *Hodges*, *Betty*, *John*, *Mary* and *Samuel*, their Children, from *Wilcot* to *Great Bedwin*, (both in *Wiltſhire*.)

CASE.—*Great Bedwin* appealed to the Seſſions, from an Order of two Juſtices, which begins thus:——"*Wilts*—*To wit*—To the "Churchwardens and Overſeers of the Poor of the Pariſh of *Wil-*"*cot*, and to the Churchwardens and Overſeers of the Poor of the "Pariſh of *Great Bedwin* in the *ſaid* County:" And it ſtates, that *Charles May*, *&c*, have for ſome Time dwelt in *Wilcot*, being allowed to do ſo by *Reaſon of a Certificate* bearing Date 27 *Dec.* 1724, under the Hands and Seals of the Churchwardens and Overſeers of the Poor of the ſaid Pariſh of *Great Bedwin*, and allowed by two Juſtices of the Peace for the County of *Wilts* aforeſaid according to the Directions of the ſeveral Acts of Parliament in that Behalf made and provided. Then it goes on thus—"Now the ſaid *Charles May*, "*being reduced to great Poverty, lately applied to the Churchwardens* "*and Overſeers of the Pariſh of Wilcot aforeſaid; who accordingly* "*did relieve him:*" And therefore the Juſtices remove him, *&c.* from *Wilcot* to *Great Bedwin*, *&c.*

The Seſſions, on Motion made on Behalf of the Pariſh of *Wilcot*, ſuggeſting *Defects in Form*, and praying that they might be *amended* purſuant to 5 *G.* 2. *c.* 19. and Counſel heard on both Sides, *&c*, being of Opinion that the ſaid Defects are only Matters of Form, and that the original Order was amendable within the ſaid Act; for that it appears to them, *upon due Examination on Oath*, that the ſaid Order was *really and truly* made by the two Juſtices UPON THE

GREAT BEDWIN *and* WILCOT.

COMPLAINT of the Churchwardens and Overſeers of *Wilcot* in due Manner made to them in that Behalf, "That the ſaid *C. M.* his "Wife and Children *were* ACTUALLY BECOME CHARGEABLE to "*Wilcot*;" but that the omitting to *mention* it in the Order was a *mere Miſtake* in drawing up the ſaid Order; and for that it doth alſo now appear to this Court, *that the ſaid* G. H. *and* J. S. *were at the Time of making the ſaid Order two of his Majeſty's Juſtices of Peace of and for the ſaid County of Wilts*, and that *one of them was then of the Quorum*, and that the omitting to *mention* the ſame in the ſaid Order was alſo a *mere Miſtake* in drawing up the ſaid Order; therefore ORDER the Defects of the ſaid original Order to be AMENDED *in Court:* Which being accordingly done, the ſaid original Order (*as the ſame is now amended* by Order of this Court) is as followeth —*Wilts, to wit, &c.* Whereas it appears, *&c*, (*one whereof is of the* QUORUM,) UPON THE COMPLAINT *of the Churchwardens and Overſeers of the Poor of the Pariſh of Wilcot*, "that, *&c*, (as in the "original Order,) *and that he and his Family* BECAME THEREBY ACTUALLY CHARGEABLE *to the ſaid Pariſh of Wilcot*, AS WE HEREBY ADJUDGE, *&c*, *&c*." And the ſaid Appeal againſt the ſaid Order *as now amended*, now coming on to be heard and determined on the Merits; this Court having heard and conſidered what has been offered in Evidence on Behalf of both the ſaid Pariſhes, is of Opinion that the ſaid Order, *as amended*, ought to be confirmed: And they confirm it accordingly.

The Objection to this Order of Seſſions, and the Ground of the Motion to quaſh it, was, "That they had amended *Matters of* SUB-"STANCE as Matters of Form:" Which is an Amendment not warranted by the Act of 5 *G.* 2. *c.* 19. For they have added, 1ſt, that it was made "*upon Complaint* of the Pariſh Officers of *Wilcot*;" 2dly, an *Adjudication* "that the Paupers were *actually become* charge-"able;" and 3dly, "that the Juſtices were Juſtices of the Peace "*for the County of* Wilts, and *that one of them was of the Quorum.*"

Yet ſtill it does not appear *what County Wilcot* is in: For, the Words—"in the ſaid County"—relate only to *Bedwin*, not to *Wilcot*.

If they had quaſhed it for Want of Form, a new original Order might have been made.

Mr. *Hollings* likewiſe ſupported the Motion, and added ſome other Objections.

It was defended by Sir *John Strange* and Mr. *Bootle*.

THE

GREAT BEDWIN and WILCOT.

THE COURT were all of Opinion, that the Amendments were *more* than Form; and not allowable within either the Words or the Intention of 5 *G.* 2. *c.* 19.

Lord Chief Juſtice LEE.—I think we have had but one Caſe upon this Act of Parliament, ſince the making of it; and that came from the County of *Bucks*: The Amendment was of a Removal to the wrong Place; which appeared upon the Face of the Order to be a Miſtake; for they adjudged the Settlement to be in *one* Pariſh, and yet removed to *another*. A Rule was made, in that Caſe, to ſhew Cauſe: But there was no further Proceeding upon it.

The Act directs that the Seſſions ſhall amend Defects in Form; and afterwards proceed upon the Merits. One would think, this meant Defects or Miſtakes appearing upon the *Face* of the Order, like that *Buckinghamſhire* Caſe which I have mentioned; *mere* Defects or Wants of *Form*. This is the firſt Thing they are to do.

Then *after* Amendments in FORM, they are to examine the Truth and Merits; and hear Proofs, and determine. Now ſome of theſe Matters here amended ſeem to be MERITS: As, for Inſtance, the adding "UPON COMPLAINT *of the Overſeers of the Pariſh* from whence the Paupers were removed;" *without* which Complaint, the Juſtices have *no Juriſdiction*.

Then what can be more of the Merits than the Certificate-man's being become *actually chargeable*? Now the two Juſtices have *not adjudged that*; they only ſay that he *applied* to the Overſeers and *was relieved* by them: But it does not appear that it was at the Pariſh Expence. And as there are no other Merits particularly ſtated by the Order, probably, theſe were the very Merits which were the Ground of the Appeal.

If there be any *Oppoſition* between Form and Merits, this Amendment muſt go further than Defects in *Form*: Theſe Matters muſt be *Merits*.

And as to their being Juſtices of the County—though a * *plain* Reference to the Margin will make an Order good as to the County, yet *this* is uncertain (as it is worded) *to which* of the two Pariſhes the Words—"in the ſaid County" relate.†

* *Ante*, No. 12. 45. *Poſt*. No. 69. 204.

† *Ante*, No. 8. S. P.

The allowing ſuch Amendments as theſe to be within the true Conſtruction of this Statute, would throw the Determination of all Caſes of this Sort into the Hands of the Seſſions: Which would be inverting the eſtabliſhed Method preſcribed by the Legiſlature.

The Three other JUDGES concurred in Opinion. And

Mr.

GREAT BEDWIN *and* WILCOT.

* *Mr. Juſtice* WRIGHT added, That the Seſſions can't amend any Thing that requires *Examination*.

Per Cur.—

RULE *made* ABSOLUTE:
BOTH ORDERS QUASHED.

* *Mr. Juſtice* WRIGHT was ſworn in, as Puiſnè Judge of *B. R.* on 24th *Nov.* 1740; on Sir *Edm. Probyn's* being made Lord Chief Baron.

No. 59.

Rex. *v.* Inhabitants of Weſton.

Wedneſday 17th *June* 1741.

A Settlement may be gained by a TENEMENT of the Yearly *Rent* of 10*l.* unleſs the *Value* of it be *leſs*, or there be ſome *fraud* expreſsly adjudged.

V. Sir *John Strange* 1156. and *Seſſions Caſes*, Ed. 1750. Vol. 2. pa. 189. No. 141. S. C.

TWO Juſtices removed *John Farnſworth*, his Wife, and three Children, with *Mary Hollingſworth* his Apprentice Girl, from *Kirton* to *Weſton* (both in *Nottinghamſhire:*) And the Seſſions, upon Appeal, confirmed the ſaid Order of Removal.

Caſe—*John Farnſworth* was ſettled at *Weſton*; and afterwards took a Farm of 10*l. per Annum* for one Year at *Kirton*, which *had been lett* at that Rent for five or ſix Years then laſt paſt; but *before that Time was lett at 7l. a Year only.* He alſo took a By-tack of 20*s.* a Year, at *Kirton*, for one Year: And he and his Family continued there, upon the ſaid Tenements, ten Months. When he firſt took and entered on theſe Tenements, he was *not of Ability to ſtock them:* having only two Cows, two Pigs and one Horſe; all which was not ſufficient Stock for ſuch Tacks: But he had Houſhold Furniture, Copper, brewing Veſſels, and other Utenſils for brewing Ale to ſell; and had a Licence for that Purpoſe. Before his Entry to the 10*l.* a Year Farm, he was told by the former Tenant that ſuch Tack was too dear at 10*l.* a Year. To which he anſwered "*That he did not regard the Dearneſs; for as it was* 10*l. a Year, it* "*would gain him a Settlement, and put an End to a Diſpute there was* "*between two Towns about his Settlement:*" BUT DESIRED *ſuch former Tenant* TO TAKE NO NOTICE THEREOF, *to any Body.* The Seſſions being of Opinion "that the ſaid *J. F.* did *not* by Vir- "tue of ſuch Renting and Inhabitancy *under the Circumſtances afore-* "*ſaid*, gain a Settlement in the ſaid Pariſh of *Kirton*," therefore confirm the Order of Removal.

A Motion had been made by Mr. *Heron*, on the firſt Day of this Term, to quaſh theſe Orders: For that it is a plain Settlement gained by *John Farnſworth* in *Kirton*; as it is ſtated "that he took "a Tenement of 10*l.* a Year there, for a Year, and reſided upon it "ten

"ten Months." It is not ſtated to be *under* that Value: And as *no Fraud* is expreſsly *adjudged*, none can be preſumed by this Court.

RULE *to ſhew* CAUSE.

Upon ſhewing Cauſe why theſe Orders ſhould not be quaſhed, it was ſaid that here is enough to occaſion a Suſpicion of a Fraud: And it appears upon the State of the Facts, that it *was under* the Value of 10 *l.* a Year.

Lord Chief Juſtice LEE—The Conſideration of this Court muſt be, Whether the Seſſions have ſtated a Caſe that juſtifies the Removal of this Man and his Family from *Kirton*, by ſhewing that the Tenement he rented in *Kirton* was *under* the Value of 10 *l.* a Year. We are not to determine the Matter, upon the *Evidence* given to the Seſſions; but upon *Facts ſtated* and *Adjudications* made by them. Here, they have ſtated Circumſtances: But they have not explicitly ſtated the real Value; *nor* have they *adjudged* any *Fraud*.

The Value of the Man's *Stock* is not material: The Value of the *Tenement* is the Point.

The Act requires the Renting a Tenement of the yearly Value of Ten Pounds. They ſtate "that he did take a Tenement of 10*l.* a "Year, for a Year, at *Kirton*." Indeed they add that it *had been* let at 7 *l.* a Year, formerly. But it might be then *worth* more, or might have been afterwards improved: It had, for *five* or *ſix* Years, been *let at ten* Pounds *per Annum*. They likewiſe ſay his Stock was not ſufficient for 10 *l.* a Year. But the Quantity or Value of his *Stock* does not alter the Value of the *Tenement*. And they alſo ſtate a Converſation between him and the former Tenant, who told him it was too dear: To which he anſwered "that as it was 10 *l.* a Year "it would gain him a Settlement and put an End to a Diſpute about "his Settlement;" and deſired the former Tenant to take no Notice of the Matter to any Body.

Yet they *do not* ADJUDGE *that there was any* FRAUD; nor do they ſtate that it was *under* the Value of 10 *l.* a Year; and the Evidence rather proves it to be *of* that Value.

They *muſt expreſsly ſtate* "that it IS *fraudulent*;" or elſe we can not take it to be ſo. And we muſt take the Caſe ſtated to be the *whole* Caſe.

He was therefore of Opinion for quaſhing both Orders. And The THREE other JUDGES concurring,

The RULE *for* QUASHING BOTH ORDERS *was* MADE ABSOLUTE.

Vide, Ante, No. 47. *Poſt.* No. 159. 185. 260. *accord.*

Michaelmas

Michaelmas Term

15 Geo. 2. 1741.

No. 60. Rex *v.* Inhabitants of Berkſwell.

Friday 20th *Nov.* 1741.

A Motion was made by Mr. *Ludford*, on the ſecond Day of this Term, to quaſh an Order of Seſſions confirming an Order of two Juſtices for removing *Mary Smith*, ſingle Woman, from *Bollſall* to *Berkſwell*, (both in *Warwickſhire*.)

Order unappealed from is *final*, though made on a *different* Ground.

The Objection was, that a former Order, *not being appealed* from within due Time, was *final* upon them. It was made for removing *Thomas Price* and *Mary* his Wife (this ſame Pauper) from *Berkſwell* to *Bollſall*; and was not appealed from.

Note.—

This Order of Seſſions entered into the Merits of the Marriage, and adjudged her to be a *ſingle* Woman; it not appearing that *T. P.'s* firſt Wife was dead at the Time, *&c.* and therefore it confirmed the preſent Order for the Removal of her, *as ſuch*, back again to *Berkſwell*; though it was a ſubſequent Order of two Juſtices, and though the former one was never appealed from.

Vide Poſt. No. 67. 96. 176. 204. *accord.*

A Rule was then made to ſhew Cauſe why theſe two Orders ſhould not be quaſhed. And

It was now MADE ABSOLUTE *without Defence.*

Hilary

Hilary Term

15 Geo. 2. 1741.

Rex *v.* Inhabitants of Stockland. No. 61.

Thurſday 4th *Feb.* 1741.

A *mortgaged Term*, veſting by ADMINISTRATION in the *Mortgagee* and *Creditor* of the *Mortgagor*, (to an Amount *exceeding* 30*l.*) will gain a Settlement; although the Mortgage-money *alone* be *under* that Amount.

V. Sir *John Strange* 1162.

TWO Juſtices removed *John Spiller*, *Elizabeth* his Wife, and *Samuel*, *Mary*, *Unity*, *John*, *Thomas* and *Elizabeth*, their Children, from *Cotleigh* in *Devonſhire* to *Stockland* in *Dorſetſhire*: And upon Appeal, the Seſſions confirmed the Order of the two Juſtices.

CASE.—*John Spiller* the Pauper was lawfully ſettled in *Stockland*. And *John Salter* of *Cotleigh*, being poſſeſſed of a Houſe, Orchard and Garden containing an Acre, in *Cotleigh* aforeſaid, for the Reſidue of a Term of Years determinable on three Lives, which coſt 40*l.* by Indenture *mortgaged the ſame* Houſe and Premiſſes to the ſaid *J. Spiller*, during the Reſidue of the ſaid Term; ſubject to Redemption on Payment of 15*l.* with lawful Intereſt on a Day therein mentioned, and paſt in the Life-time of the ſaid *J. Salter*. That *J. Salter* afterwards died inteſtate: At the Time of whoſe Death, one of ſuch Lives was dead; and there was then due on ſuch Mortgage, the principal Sum of 15*l.* and thirty Shillings for two Years Intereſt thereof. And the Mortgage-monies being then not paid, and the ſaid *J. Salter being alſo indebted to the ſaid J. Spiller, by Bond and ſimple Contract, in the Sum of* 18*l.* 10*s. making in all* 35*l.* the ſaid *J. Spiller* agreed with the Widow of the ſaid *J. Salter*, that in Caſe ſhe would renounce the Adminiſtration, ſhe ſhould have the Houſehold Goods: Which was done accordingly; and on her Renunciation, the ſaid *J. Spiller took Letters of Adminiſtration* (as principal Creditor) to the ſaid *J. Salter*; and thereupon *entered upon ſuch Houſe*, Orchard and Premiſſes (which was then *appraiſed at* TWENTY-FIVE POUNDS,) and poſſeſſed himſelf thereof, and alſo of a Cyder-wring appraiſed at 40*s.* But the Reſt of the Effects (which were appraiſed at 20*s.*) he permitted the Widow to keep and retain to her own Uſe, purſuant to ſuch Agreement. And then the ſaid *J. Spiller*

STOCKLAND and COTLEIGH.

ler removed into the ſaid Pariſh of *Cotleigh, and ſettled in ſuch Houſe and Premiſſes*, and WAS OFFERED THIRTY POUNDS for the ſame, and *continued to dwell therein by the Space of eight Years*; when *ſuch Eſtate* DETERMINED: Nevertheleſs, he *continued* in the ſaid Houſe, TILL *he was removed* by the ſaid Order. The Seſſions being of Opinion "that the ſaid *J. Spiller* did *not*, by ſuch Poſſeſſion and living "in ſuch Houſe and Premiſſes, gain any *Settlement in Cotleigh aforeſaid*;" they therefore confirm the Order of the two Juſtices.

On *Wedneſday* the 18th of *November* laſt a Motion was made by Serjeant *Huſſey*, to quaſh theſe Orders: For that by the Act of 9 *G.* 1. *c.* 7. *ſ.* 5. it was a Purchaſe of the Value of 30 *l.* and *did* gain a Settlement in *Cotleigh*, from whence he could not be removed.

Upon ſhewing Cauſe now, it was denied, by Sir *John Strange* and Mr. *Gill*, to be within this Act.

This is only a Mortgage of *fifteen Pounds*: Whereas it ought to be a *Purchaſe* (bonâ fide *paid*) *of thirty Pounds* out and out. The ſimple Contract-debt can never be taken in as *Part of the Purchaſe-money bonâ fide paid* on a *Purchaſe*. And even if the whole Money was to be allowed, yet it was *appraiſed only at twenty-five Pounds*. And though he was afterwards *offered thirty Pounds*, it is *not ſtated* to be WORTH that Sum.

Mr. *Gundry* and Mr. *Lloyd* inſiſted that the Value appeared to be at leaſt 30 *l.* He was offered 30 *l.* And a Thing is worth what it will fetch. Appraiſements are always *under* the true Value.

However, as he came into it *under a legal Title*, as Adminiſtrator, he was irremovable from it; and by inhabiting forty Days upon it, gained a Settlement.

THE COURT were unanimous that he was legally ſettled in *Cotleigh*. The Conſideration he has *bonâ fide* paid, exceeds the Sum of 30 *l.* And he remained upon the Eſtate, irremovable, forty Days. 'Tis clearly within the Words of the Act. Therefore the Orders ought to be quaſhed.

Per Cur.—

ORDERS QUASHED.

Rex

Rex *v.* Inhabitants of St. Nicholas in Harwich. No. 62.

Wednesday 10th *Feb.* 1740.

A CERTIFICATE is effectual tho' *miſdirected*, or not *delivered* to the *proper Officer*. And *renting* 10 *l.* a Year, if *fraudulent*, will not gain a Settlement, *V.* Sir *John Strange* 1163. S. C. but extremely ſhort, and not ſufficiently particular.

TWO Juſtices made an Order for the Removal of *Thomas Parſons*, *Suſannah* his Wife, and *Suſannah*, *Sarah*, *Thomas*, *William*, *Robert* and *Elizabeth*, their Children, from *Woolverſtone* in *Suffolk* to *St. Nicholas* in *Harwich*, in *Eſſex*: And the Seſſions, upon Appeal, confirmed their Order.

The Order of Seſſions is to the following Effect—*viz.* This Court being moved, by Way of Appeal, to ſet aſide an Order under the Hands and Seals of *John Sparowe* and *William Acton*, Eſquires, two, &c. for the removing of *Thomas Parſons*, *Suſannah* his Wife, *Suſannah*, *Sarah*, *Thomas*, *William*, *Robert* and *Elizabeth*, their Children from the Pariſh of *Woolverſtone* in the County of *Suffolk* to the Pariſh of *St. Nicholas* in *Harwich* in the County of *Eſſex*, as the Place of their laſt legal Settlement; on hearing the Counſel and the Evidence on both Sides—

The Caſe appeared to be—That the ſaid *Thomas Parſons* obtained a CERTIFICATE from the Churchwarden and Overſeer of *Woolverſtone* in the Words following—" To the Churchwardens and " Overſeers of the Poor of the Pariſh of HARWICH NEAR DOVER-COURT in the County of *Eſſex*, or to any or either of them. " *Suffolk*, *to wit*, We whoſe Hands and Seals are hereunto ſet, be- " ing the Churchwardens and Overſeers of the Poor of the Pariſh " of *Woolverſtone* in the County of *Suffolk* aforeſaid, do hereby cer- " tify that We do own and acknowledge *T. P. S.* his Wife, *S. S.* " *T. J.* and *W.* their Children, to be our Inhabitants legally ſettled " in the Pariſh of *Woolverſtone* aforeſaid. In Witneſs whereof we " have hereunto ſet our Hands and Seals this 31ſt Day of *Decem-* " *ber* in the 11 *G.* 2. &c. 1737. *James Hare*, Churchwarden: " The Mark of *Jonathan Rozier*, Overſeer. Atteſted by *R. N.* " *T. C.*—We whoſe Names are hereunto ſubſcribed, two of his " Majeſty's Juſtices of the Peace for the County aforeſaid, do al- " low of the above-written Certificate: And we do alſo certify " that *T. C.* one of the Witneſſes who atteſted the Execution of " the ſaid Certificate, hath made Oath before us, that he did ſee " the Churchwarden and Overſeer, whoſe Names and Seals are to " the ſaid Certificate ſubſcribed and ſet, ſeverally Sign and Seal the " ſaid Certificate; and that the Names of the ſaid *R. N.* and *T. C.* " (whoſe Names are above ſubſcribed as Witneſſes to the Execu-

St. Nicholas and Woolverstone.

" tion of the ſaid Certificate) are of their own proper Hand-writing. " Dated the 31ſt Day of *December* in the Year of our Lord 1737. " *E. Lynch, John Cornelius.*"—Which ſaid Certificate appeared to this Court to be legally executed, atteſted, ſworn and allowed, purſuant to an Act of Parliament lately made and provided.

That the ſaid *Thomas Parſons* went into the Pariſh of *St. Nicholas in Harwich*, with the ſaid Certificate, and *delivered the ſame unto Mr.* Griffith Davis, AN INHABITANT *of the ſaid Pariſh:* But *whether he was a* CHURCHWARDEN *or* OVERSEER *of the ſaid Pariſh*, DID NOT APPEAR.

Subſequent to which Delivery, *William Trotman* of *Ipſwich*, Brewer, having *hired a Public Houſe in the ſaid Pariſh of St. Nicholas*, (called the *Angel*) at a yearly Rent of 18 *l. let Part of it to the ſaid Parſons*, as a Public Houſe, for 9 *l.* 10 *s. a Year*; reſerving the Brewing-office and other Parts of the ſaid Houſe to himſelf: And ſubſequent to the Letting, and the ſaid *Parſons* having obtained a Licence from the Juſtices of the Burrough of *Harwich*, entered into the following Bond—" *Know all Men* by theſe Preſents, " That I *William Trotman* of *Ipſwich* in the County of *Suffolk*, " Brewer, am held and firmly bound unto the Mayor and Burgeſſes " of the Burrough of *Harwich* in the County of *Eſſex* in 250 *l.* of " good and lawful Money of *Great Britain*, to be paid to the ſaid " Mayor and Burgeſſes, their certain Attorney or Succeſſors: To " which Payment well and truly to be made I bind myſelf, my " Heirs, Executors and Adminiſtrators, firmly by theſe Preſents. " Sealed with my Seal. Dated the 10th Day of *January* in the " Year of our Lord 1737, and 11 *G.* 2. *&c.*

" Whereas the above-bounden *William Trotman* is at preſent the " immediate Tenant to the Landlord, Owner or Proprietor of the " Meſſuage, Tenement or Inn, commonly called or known by the " Name or Sign of the *Angel*, ſituate in *Harwich* aboveſaid, of late " let or rented at and under the yearly Rent of 18 *l.* And whereas " the ſaid *William Trotman* hath put and placed one *Thomas Parſons* " an *Inhabitant of the Pariſh of Woolverſtone* in the County of *Suffolk*, into the ſaid Houſe for the Management and carrying on of " the Buſineſs of the ſame, as a Victualler; who, upon the ſpecial " Inſtance and Requeſt of the ſaid *William Trotman* on his Behalf, " hath obtained from *John Philipſon*, Eſq; the preſent Mayor of the " ſaid Borough of *Harwich*, and other of his Majeſty's Juſtices of " the Peace for the ſame, a Licence for his ſo doing in the uſual " Form: And whereas the ſaid *Thomas Parſons*, with Reſpect to

" his

" his Subſtance or Eſtate and Effects, is under a legal Incapacity of " hiring the ſaid Houſe in a fair Way as a Tenant, or of renting " any other Lands or Tenements of the yearly Rent of 10*l.* or up- " wards, whereby to gain a Settlement out of the ſaid Pariſh of " *Woolverſtone*; and having a large Family, to wit, a Wife and five " Children, might haply hereafter, by hiring the ſaid Houſe of the " ſaid *William Trotman* or others deriving Intereſt from him, be " deemed to gain a Settlement in *Harwich*, and by ſuch Means be- " come a Charge and Burthen to the ſaid Mayor and Burgeſſes of " the ſaid Burrough and other the Inhabitants of the Pariſh of *St.* " *Nicholas* within the ſame (which the ſaid *William Trotman*, in Con- " ſideration of the ſaid Licence being granted at his Requeſt, hath " undertaken, as much as in his Power is, to prevent;) Now there- " fore the Condition of the above-written Obligation is ſuch, that " if the ſaid *William Trotman*, his Heirs, Executors or Adminiſtra- " tors, do and ſhall from Time to Time and at all Times hereafter " ſave harmleſs and keep indemnified, as well the ſaid Mayor and " Burgeſſes of the Burrough of *Harwich* aforeſaid, and their Succeſ- " ſors, as other the Inhabitants and Pariſhioners of the ſaid Pariſh of " *St. Nicholas* within the ſame, of and from all Charges, Damages and " Expences which they or any of them might hereafter happen to ſuſ- " tain or be put unto for the Proviſion or Maintenance of the ſaid *T.* " *P.* his Wife or Children or any of them, by Reaſon or Means of " his or their gaining any legal Settlement in *Harwich* by or under " his the ſaid *Thomas Parſon's* hiring or renting the ſaid Houſe of or " under him the ſaid *William Trotman*, or of or under *William Trot-* " *man* his Son, or of or under any other Perſon or Perſons whatſo- " ever with his the ſaid *William Trotman* the Father's Aſſent, Con- " ſent, Means or Procurement; then this Obligation to be void, " and ſo forth. *W. Trotman*.—Sealed and delivered in the Pre- " ſence of us *S. G. J. A.*"

St. Nicholas. *and* Woolverstone.

Soon after this Hiring of *Trotman*, the ſaid *Parſons* hired, of another Perſon, a Stable, (for the Convenience of keeping Hogs from Mr. *Trotman's* Brewing-office,) and a Yard or Garden, at the *Rent of* 20*s. per Annum*, (both in the ſaid Pariſh;) which the ſaid *Parſons* entered upon: But the ſaid *Trotman* ſoon diſcontinuing his Brewing at the ſaid Office, the ſaid *Parſons* then *let off the ſaid Stable for* 10*s. per Annum*; but continued the Occupation of the ſaid Yard or Garden for a whole Year, and paid 10*s.* for the Rent thereof. The ſaid *Parſons* likewiſe entered upon, reſided in, and continued the Occupation of the ſaid Part of the Houſe under this Demiſe of

Trotman

ST. NICHOLAS *and* WOOLVERSTONE.

Trotman, for two Years and a Half, which was as long as *Trotman's* Intereſt continued therein; and after that was determined, occupied the whole Houſe (but without previouſly agreeing with the Owner for his Stay therein,) for upwards of half a Year; when the Owner diſtrained him for half a Year's Rent, and levied of his Goods then remaining upon the Premiſſes the Sum of 9 *l.* for the ſaid Half Year's Rent.

During the Time of theſe ſeveral Occupations, the ſaid *Parſons* was *charged with and paid his Share of the public Levies of the ſaid Pariſh of St. Nicholas.*

It appeared likewiſe to the ſaid Court, that the ſaid *Parſons had been a Farmer* in large Dealings; but that he had contracted Debts, was *fallen into Decay*, and was *not able to go on* with the ſaid Buſineſs of Farming: Subſequent to which, he hired the ſaid Part of the Houſe of the ſaid *Trotman*; which the ſaid *Parſons* furniſhed with Goods, to the Value of 30 or 40 *l.*

It likewiſe appears to this Court, that the *proper Name* of the Pariſh appealing is ST. NICHOLAS IN HARWICH; and that there is *no ſuch Pariſh of* HARWICH NEAR DOVER COURT: Nor did it appear to this Court that the Borough or Corporation of *Harwich* contains any more Pariſhes than one.

Upon which Caſe this Court is of Opinion, *upon the Facts* ONLY *above ſtated*, "That the ſaid Hirings and Occupations were *fraudu-* "*lent*, and *could not intitle a Certificate-perſon to a Settlement:*" But BELIEVING THE SAID CERTIFICATE, WITH THE CIRCUMSTANCES ATTENDING IT, *to be* INEFFECTUAL *to the ſaid Pariſh of St. Nicholas* in *Harwich*, do *therefore* confirm the ſaid Order of Removal.

On *Friday* 13th *November* laſt, a Motion was made by Mr. *Lloyd*, to quaſh theſe Orders: For the Certificate *was an effectual* one to the Pariſh of *St. Nicholas*. The Seſſions ſeem to found their Notion "of its being *ineffectual* to *that* Pariſh," upon two Reaſons; *viz.* 1ſt, that this Certificate was directed to the Pariſh of *Harwich* generally; whereas the true Name of it was *St. Nicholas Harwich:* And 2dly, the Perſon to whom he delivered it did *not appear* to be a *Churchwarden* or *Overſeer*. But, as to the former of theſe Reaſons—the Anſwer is, That the Act of Parliament of 8 & 9 *W.* 3. *c.* 30. *ſ.* 1. does not require the Certificate to be *directed* at all: No more does the explanatory Act of 9 & 10 *W.* 3. *c.* 11. And

As

St. Nicholas and Woolverstone.

As to the latter of their Reasons—It is *not necessary* that the Inhabitant to whom the Certificate was delivered should APPEAR *to be* a *Churchwarden or Overseer* of the Parish.

THE COUNSEL who now shewed Cause on Behalf of the Parish of *Woolverstone*, did not much rely upon it "that a *particular Direction* was *necessary*." They admitted that a Certificate would be good *without any* Direction at all: But at the same Time they argued that a *wrong* Direction would vitiate it, and compared it to a Case in *Salk.* 493. between the Parishes of *St. George* and *St. Olave Southwark*; where an Order was quashed for being directed to the wrong Parish-officers. They chiefly relied on its *not* being *delivered to a Parish-officer*: Which the Act of 8 & 9 *W.* 3. *c.* 30. *s.* 1. *expressly requires*; and which ought, as they insisted, to *appear*. And if the Certificate was *ineffectual* to the Parish of *St. Nicholas*, then he gained a Settlement there, by being *charged and paying* his Share of its public Rates and Levies.

However, even if this Certificate, thus delivered, were admitted to be effectual and legal, and to bind the Parish of *Woolverstone*, yet they insisted that he gained a Settlement in *St. Nicholas* by renting 10 *l.* a Year. Indeed the Sessions state this to be fraudulent: But they adjudge it to be so, upon the *Facts stated*, and upon *those* ONLY: And since they have *given* their Reasons, the Court are Judges of the *Conclusion* they draw from those Reasons. And upon the Facts stated, there is not the least Colour of Fraud.

Mr. Justice CHAPPLE*.—The Question is, Whether the Pauper gained any Settlement in *Harwich*; either by renting 10 *l.* a Year there, or by being charged and paying to the Rates of that Parish.

Now being charged and *paying to the Rates* will *not* gain him a Settlement, *if* he was a *Certificate*-man: And as to the Renting a Tenement of 10 *l.* a Year, the Sessions *adjudge it fraudulent*.

If the Justices specially state their Reasons, this Court may judge of them. However the Justices are proper Judges of the Fraud: And here are several Circumstances which shew this Taking to have been calculated to gain a Settlement, and seem to be *Evidences* of Fraud; and the Sessions having adjudged it so, they seem, upon the whole, to have done right.

As to the VALIDITY *of the Certificate*—there are *two* Objections to it. The Justices say, that "they believe it to be ineffectual to the "Parish of *St. Nicholas*." They state that there is but one Parish in *Harwich viz. St. Nicholas*: And the Certificate is addressed to the

* L. C. J. *Lee* was ill: Mr. Justice *Page* was dead; and his Successor not appointed. So that there were only two Judges in Court.

ST. NICHOLAS *and* WOOLVERSTONE.

Pariſh of *Harwich near Dover-Court*; whereas there is *no* ſuch Pariſh.

I do not think *any Direction at all to be neceſſary:* And a *Miſ*direction is as a *void* Direction. Beſides, if a Direction were neceſſary, I ſhould doubt whether this Miſtake of the Name would make it bad. I remember a Caſe of a Carrier, in Lord *Raymond*'s Time, where the Plaintiff recovered, though there was no ſuch Pariſh as *Wicomb*, the true Name being CHIPPING-*Wicomb*. However, I do not think *any* Direction to be *neceſſary*.

Then as to the *Delivery* of the Certificate—it was delivered to an *Inhabitant*, though it does not appear that he was a *Pariſh-Officer*. If it had been a *Removal* to *Harwich*, *then* indeed a Delivery to the Officer *had* been neceſſary. But the Acts do * not make it a *Condition* "that he ſhall deliver his Certificate to the Pariſh Officers."

He therefore held this Man *not* to have gained a Settlement in *Harwich:* And was of Opinion that the Orders ought to be quaſhed.

Mr. J. WRIGHT concurred—It is admitted, on all Hands, that the Act of 8 & 9 *W.* 3. *c.* 30. does *not* require *any* DIRECTION of a Certificate; and that if there had been *none*, it had nevertheleſs been good. The *Reaſon* of it is, becauſe the Pariſh of *Woolverſtone* has by their Certificate *acknowledged* him to be "an "Inhabitant *legally ſettled in their Pariſh:*" And they are thereby bound againſt all the World.

As to the *Delivery* of the Certificate—the Pariſh to whom a Certificate is delivered cannot remove the certificated Perſon indeed, till he becomes chargeable: But *if no Certificate is delivered* to them, *non conſtat* that there *is* any; and they may, in *that* Caſe, remove him on Complaint of his being likely to become chargeable. But yet, this does *not* make the Certificate *ineffectual:* The Pariſh who *gave* the Certificate is in all Events *bound* by the Certificate. Therefore the Certificate is good *as* to the Pariſh of *Woolverſtone*.

The Queſtion then is, whether he gained a Settlement in *Harwich* within 9 & 10 *W.* 3. *c.* 11. by taking a Tenement of 10*l.* a Year Value.

Now though he took ſuch a Tenement, yet he *let off* Part of it. And the Bond recites his *Poverty and Incapacity to gain a Settlement*. *Trotman* had let him in: And the Pauper continues in, after *Trotman*'s Intereſt ceaſed, without any new Bargain. He takes a little Stable and Garden at 20*s.* a Year: And then he quits the Stable, and there remained only 9*l.* 10*s.* a Year. The Juſtices adjudge this

* *N. B.* 8 & 9 *W.* 3. *c.* 30. *ſ.* 1. does expreſsly require "that "he ſhall *deliver it to* "the *Church*-"*wardens or* "*Overſeers.*"

this fraudulent: And the Circumſtances vindicate their Adjudication. But if the Facts had *not* vindicated their Concluſion, yet unleſs it had manifeſtly and plainly appeared to have been a Miſconcluſion, I do not ſee that we could have adjudged it "*not* to be fraudulent." St. Nicholas and Woolverstone.

Upon the whole, I think the Settlement is at *Woolverſtone*; and that the Rule ought to be made abſolute.

Per Cur.—
RULE *made abſolute for quaſhing both* ORDERS.

Memorandum.—On the laſt Day of this *Hilary* Term 1741, 15 *G.* 2. *Mr. Juſtice* DENISON took his Place upon the Bench, as puiſne Judge; a Vacancy having happened by the Death of SIR FRANCIS PAGE, who died on the 18th of *December* 1741; having been ſecond Judge of this Court ever ſince the Acceſſion of his preſent Majeſty King *George* the Second.

Eaſter Term

15 Geo. 2. 1742.

Rex *v.* Inhabitants of Bowling. No. 63.

Saturday 15th *May* 1742.

A *Certificate* is avoided, and Settlement gained, in the *certificated* Pariſh, by *renting* 10 *l.* a Year, although the whole of it does not lie in the *ſame* Pariſh.

TWO Juſtices made an Order for the Removal of *John Hillam*, *Judith* his Wife, and *Jeremiah* and *Elizabeth their Children*, (not ſetting forth the Ages of the Children) from *Bradford* to *Bowling*, (both, in the Weſt Riding of *Yorkſhire*:) And the Seſſions, upon Appeal, confirmed that Order.

CASE ſtated.—*John Hillam*, being legally ſettled at *Bradford*, was bound Apprentice to *Abraham Marden*, *a Certificate-man* in *Bowling*: where he ſerved his Maſter ſix Years under the ſaid Indenture. During the Service, *Abraham Marden* the Maſter rented and reſided upon a Tenement of *nine Pounds a Year in Bowling*;

BOWLING *and* BRADFORD.

and, at the ſame Time, alſo rented Lands of the *Value of one Pound ſixteen Shillings a Year in Wybſey* in the ſaid Riding. The Seſſions are of Opinion "that the ſaid *Abraham Marden, by renting upwards* "*of ten Pounds a Year in Manner above-mentioned*, obtained a Set-"tlement for himſelf and for the ſaid *John Hillam* his Apprentice;" and therefore confirm the Order of the two Juſtices.

On *Friday* the 5th of *February* laſt, a Motion was made, by Sir *John Strange*, Solicitor General, to quaſh theſe Orders: And the two following Exceptions were taken by him.

1ſt, The Order of the two Juſtices does not *adjudge that the* WIFE AND FAMILY *of this* John Hillam *have gained a Settlement*; nor does it *ſet forth the Age of the Children*: It only adjudges "that the "laſt Place of the lawful Settlement of the ſaid *John Hillam* is in "the ſaid Townſhip of *Bowling*."

2dly, That the *Apprenticeſhip* was to a *Certificate*-man, who had *not himſelf gained a Settlement*; having not rented 10*l.* a Year *in the Pariſh* to which he came by Certificate.

Upon ſhewing Cauſe now, it was anſwered to the 1ſt Objection —That it could affect *only the Children*: For, as the Huſband is adjudged to be ſettled in *Bowling*, his Wife is, of Conſequence, ſettled there likewiſe.

And as to the ſecond—It was grounded upon a Notion "*that* the "10*l.* a Year ought to be ALL *in the Pariſh* whither he came by "Certificate." But to this it was anſwered, That renting 10*l.* a Year is required only *in general*; and is *not confined* to the particular Pariſh: The Words—"*in ſuch Pariſh*"—relate *only* to "executing "ſome annual Office." And it is within the ſame Reaſon, (*viz.* the Subſtance and Credit of the Man) whether he rents that Value in *one* Pariſh, or in *different* Pariſhes.

THE COURT held the firſt Exception to be fatal with Regard to the *Children*: For, the eſtabliſhed Rule is "That where the Children "are ſent in Conſequence of their Father's Settlement, either the "*Ages of the Children muſt be ſet out*," (to ſhew that they are of ſuch tender Years as not to have gained a Settlement for themſelves;) "*or* there muſt be an expreſs Adjudication of their having *gained no* "*other* Settlement." Therefore it is bad as to the *Children*; neither of the before-mentioned Matters being alledged or adjudged.

The Ages of *Children* muſt be ſet out, or their Place of Settlement expreſsly adjudged. *Vide Ante*—No. 26. 29. 45. —57.—S. P.

As to the 2d Exception—It depends upon the Conſtruction of the Words of 9 & 10 *W.* 3. *c.* 11. which ſays that no Certificate-perſon ſhall gain a Settlement in the Pariſh, "Unleſs he or they ſhall *really* "*and bonâ fide* take a Leaſe of a Tenement of the yearly Value

"of

" of 10*l.* *or* ſhall execute ſome annual Office *in ſuch Pariſh.*" Now there is no Reaſon why this Statute ſhould receive a different Conſtruction from that of 13 & 14 *C.* 2. *c.* 12. The Words—" *in ſuch* " *Pariſh*"—in 9 & 10 *W.* 3. *do not reſtrain the Tenement* to the *ſame* Pariſh: They rather favour the Conſtruction being the *ſame* as on 13 & 14 *C.* 2. for they relate only to the latter Clauſe of executing ſome annual Office; and not at all to the former, of taking a Leaſe of a Tenement of the yearly Value of 10*l.* And that the Conſtruction is ſo upon the Statute of *C.* 2. appears by the Caſes of *Rex* v. *The Inhabitants of Hollibourn**, *M.* 3 *G.* 2. *B. R* and *Rex* v. *The Inhabitants of Sandwich*†. And there is *not* the ſame Reaſon for the Renting 10*l.* a Year to be in the ſame Pariſh, as there is for ſerving an Office in it. For the firſt Clauſe turns upon a Man's Subſtance; *viz.* his Capacity of renting 10*l.* a Year; and it is immaterial *where* he rents it: But where he executes an annual Office in a Pariſh, the Pariſh is *benefited* by ſo doing.

BOWLING *and* BRADFORD.

* *V. Ante*, pa. 45.

† *Ante*, No. 13.

Vide Poſt, No. 190. S.P.

Per Cur.—

Both Orders muſt be QUASHED as to the Children; *and* AFFIRMED *as to the Reſt.*

Rex *v.* Inhabitants of Ladock. No. 64.

The ſame Day.

Service with the *Executor* of the *Maſter* will gain a Settlement, under a *Hiring* for a Year.

V. Sir *John Strange* 1164.

TWO Juſtices made an Order for the Removal of *John Roberts*, *Joan* his Wife, *John Roberts* the Younger aged about eleven Years, *Richard Roberts* aged about nine Years, *Walter Roberts* aged about five Years, and *Grace Roberts* aged about two Years, (the Sons and Daughter of the ſaid *John Roberts*) from *Ladock* to *St. Enoder*, (both in *Cornwall:*) And, upon Appeal, the Seſſions diſcharged the Order of the two Juſtices.

CASE.—*John Roberts* covenanted with one *Daniel Huddy* to ſerve him for one Year in *Ladock*, for 4*l.* 10*s.* and ſerved him, and received the ſaid Years Wages of him. Upon the Expiration of the ſaid Year, *John Roberts* the Pauper, made a new Contract with the ſaid Maſter, to ſerve him for another Year, for the Wages of 5*l.* 10*s*; and in Purſuance of the laſt-mentioned Contract, ſerved with the ſaid Maſter, and *lived with him in* LADOCK *till* the Time of his Maſter's Death (which happened about *half a Year* after the laſt-mentioned Contract was made.) Upon the Death of the Maſter, one *William Huddy* of *St. Enoder* (the *Executor* of the ſaid *Daniel Hud-*

Ladock and St. Enoder.

dy the late Maſter) aſked the ſaid Pauper "if he was willing to "ſerve him (the Executor) for the Remainder of the ſaid laſt-men-"tioned Year, according to the Bargain made between the ſaid Teſta-"tor and the ſaid *John Roberts*:" *Which Roberts agreed to*; and thereupon went with and *ſerved the ſaid Executor* IN ST. ENODER *during the Remainder of the ſaid Year*; and at the End of it, received of *William Huddy* ſome Part of the Wages that were due to the ſaid *Roberts* at the Death of the ſaid Teſtator (who had paid ſome Part, himſelf, to the ſaid *Roberts*;) and the Executor alſo paid the ſaid *Roberts* the Reſidue of the Year's Wages contracted for with the Teſtator. Upon Conſideration of which, the Seſſions diſcharged the Order of the two Juſtices, and ordered the Paupers to be conveyed from *St. Enoder* to *Ladock*.

On *Friday* 5th *Feb.* laſt, a Motion was made, by Serjeant *Huſſey*, to quaſh this Order of Seſſions; the Man's true Settlement being, as he ſaid, in *St. Enoder*. He had a Rule to ſhew Cauſe.

And Cauſe was now ſhewn, by Mr. *Clive* and Mr. *Gundry*.

In Support of the Motion, it was urged that the Service of the Executor for the laſt Part of the Year in *St. Enoder* gained him a Settlement *in St Enoder*: For the laſt forty Days Service makes the Settlement. So it was holden in *Tr.* 8 *G.* 1. *B. R.* between* *St. Peter's Oxford* and *Fawley Court*. This was a *Continuance* of the *Service*: And it is not neceſſary that it ſhould be under the ſame *Contract*. To prove theſe Aſſertions, ſeveral Caſes were cited. *Trin.* 12 *Ann. Silverton* and *Aſhton*. [*V. Seſſ. Caſes*, Ed. 1750, Vol. 1. pa. 44. No. 46.] *Hil.* 1 *G.* 1. *Stoke Fleming* and *Bury Pomeroy*. [*V.* the ſame Book, pa. 88. No. 83.] *Mich.* 9 *Ann. Dunsfold* and *Fletching*. *H.* 1 *G.* 1. *Brightwell* and *Henning*. [*V. Lucas's Reports*, 10 *Mod.* pa. 287.] *Paſch.* 4 *G.* 2. *Ivinghoe* and *Solebury*. *Trin.* 13 *W.* 3. *Rex* v. *Inhabitants of Eccles*. And *Hil.* 8 *G.* 2. *Rex* v. *Inhabitants of St. George's Hanover Square*. [*V. ante*, No. 5. p. 12.]

* *Vide, Poſt. P.* 421, 2.

In *P.* 4 *G.* 2. *B. R.* between the Pariſhes of *Ivinghoe* and *Solebury*—a Service under the Aſſignee gained a Settlement. So an Apprentice ſerved an Aſſignee, and gained a Settlement, *Rex* v. *The Inhabitants of St. George's Hanover Square*. *H.* 8 *G.* 2. *B. R.*

The Counſel for the Order of Seſſions admitted the Hiring and Service for a Year to be good; And that the Settlement would have been in *St. Enoder*, *if* he had continued to ſerve the *ſame* Maſter. But they denied that the Service of an *Executor* could be conſidered as the *ſame Service* with the Service of the Teſtator, within 3 & 4 *W.* & *M. c.* 11. The Contract with the deceaſed Maſter and the Service

Service to him were *perſonal*. By the *Death* of the Maſter, the Contract was at *an End*; and the Servant might have refuſed to ſerve the Executor during the Remainder of the Year. Therefore this was not one and the ſame Service: It can't be eſteemed a *Continuance* of it, after the Maſter is *dead*. The Caſes cited on the other Side are all founded upon their being conſidered as Continuations of the Service under the *ſame* Maſter. But *this* Maſter is *dead*; and *William Huddy* does not go on with the Servant *as* Executor to *Daniel*; but makes a *new* Contract with him. Therefore they are not applicable to *this* Caſe. LAPOCK and ST. ENODER.

Lord Chief Juſtice LEE.—The firſt Year's Service (with *Daniel Huddy*) is not material to the preſent Caſe: The Queſtion is "Whether he gained a Settlement at *St. Enoder* by ſerving "the *Executor*."

It is agreed, that where there is a proper Hiring and Service, the Place of Service for the *laſt forty Days* gives the Settlement.

The preſent Queſtion depends upon 8 & 9 *W.* 3. *c.* 30. *ſect.* 4. *viz.* "Whether it be a *Continuance* for a Year in the *ſame Service*." The Words of that Act are—"Unleſs ſuch Perſon ſhall *continue and* "*abide* in the *ſame Service* during the Space of one whole Year."

This Caſe differs from that of *Apprentices*; where the Settlement is gained by Service under the Indenture.

There has been no adjudged Caſe of ſerving an *Executor* of the Maſter of a *hired* Servant. But I do not know how to diſtinguiſh this Caſe from that of **Solebury* and *Ivinghoe*; where the Servant ſerved the *Aſſignee* of the Farm; and the Court conſidered it as a *Continuance of the Service* under a Hiring for a Year. So, in this Caſe, the Contract is *continued* by the Executor; and the Difference of Perſons cannot be more material in *this* Caſe, than it was in *that*: Nor does the Act of Parliament require the Service to be the ſame as to the *Place* or *Perſon*; but only a Continuance of the *ſame Service*. And *this* is a Continuance of the ſame Service, and *not* a *new* Contract. * *V. Aſtt*, pa. 13.

Where there is a Hiring for a Year and alſo a Service for a Year, they ſhall be joined together. I think this is the *ſame* Service; *viz.* a Hiring continued, like the caſe of *Solebury* and *Ivinghoe*; with a Difference only as to the *Perſon*. Therefore the Order of the two Juſtices ought to be affirmed; and the Order of Seſſions quaſhed.

Mr. Juſtice CHAPPLE was abſent.

Mr. Juſtice WRIGHT and Mr. Juſtice DENISON concurred in his Lordſhip's Opinion.—They held it *no* new Contract. The

LADOCK *and* ST. ENODER.

Executor was the *Repreſentative* of the Teſtator; and only aſked the Servant "if he was willing to *continue* the former Contract." The Contract was *not* determined and diſſolved by the Death of the Maſter. The Servant was obliged to ſerve the Executor; and the Executor to pay him. *Dalt.* 129.

And they agreed that this, being the Caſe of an *Executor*, was a ſtronger Caſe than that of *Solebury* and *Ivinghoe*, where the ſecond Maſter was only *Aſſignee* of the Farm, (a mere Stranger.)

Per Cur. unanimouſly,

RULE *made* ABSOLUTE *for* QUASHING *the Order of Seſſions*, and AFFIRMING *the Order of the two Juſtices.*

No. 65. Rex *v.* Inhabitants of Sherborne.

Friday 21ſt *May* 1742.

The Son of a *Certificate*-man, born *after* the *Certificate*, is incapable of gaining a Settlement by *Hiring* and *Service*, in the *Certificated* Pariſh.

V. S. C. in Sir *John Strange* 1165. and *Seſſ. Caſes*, Ed. 1750, Vol. 2. pa. 383. No. 203. (The former is very ſhort; The latter, a quite imperfect Scrap.)

TWO Juſtices made an Order for the Removal of *George Eyres*, *Catharine* his Wife, and *Elizabeth*, *James*, *Catharine*, *Mary*, *George* and *Robert*, their Children, from *Sherborne* to *Thornford*, (both in *Dorſetſhire*.) And the Seſſions, upon Appeal, diſcharged this Order.

The Order of Seſſions is as follows—Upon hearing the Appeal of the Inhabitants of *Thornford*, from the Order of two Juſtices for the Removal of *George Eyres* (Button-mold Cutter,) *Catharine* his Wife, *Elizabeth*, *James*, *Catharine*, *Mary*, *George* and *Robert*, their Children, from *Sherborne* to *Thornford* as the Place of their laſt legal Settlement, it appears unto this Court, and this Court doth adjudge it to be true,

That *Humphry Eyres*, Father of the ſaid *George* the Pauper, was an Inhabitant legally ſettled in *Thornford*; and that the ſaid *H. E.* (who is ſtill living) by and with a legal and proper CERTIFICATE *from Thornford*, bearing Date 30 *March* 1702, went into the Pariſh of *Sherborne*, with his Wife and Family: By which *Certificate*, the ſaid *H. E.* his *Wife and Family* were owned to be legal Inhabitants of *Thornford*, and that they would receive and provide for them when they ſhould become chargeable. That about two Years after the ſaid *H. E.* went into the ſaid Pariſh of *Sherborne*, *his* THEN *Wife died*, and ſhortly after he MARRIED *a* SECOND *Wife*, the *Mother of the Pauper George Eyres.* That the Pauper, about three Years after ſuch ſecond Marriage, was *born in the Pariſh of Sherborne whilſt his Father the ſaid* H. E. *reſided there under the ſaid Certificate.* That when

Sherborne and Thornford

when the Pauper was about *ſixteen* Years of Age and lived with his ſaid Father as Part of his Family, the ſaid *H. E.* the Father *hired one* Francis Pope *to cut Button-molds for the ſaid* H. E. And *during the Time the ſaid* Francis Pope *ſo worked with the ſaid* H. E. he the ſaid *H. E.* the Father AND ALSO *the ſaid* G. E. *the Pauper (his Son) agreed with the ſaid* Francis Pope " *that he the ſaid* G. E. *the* " *Pauper ſhould work with* AND SERVE *the ſaid* Francis Pope *for* " *one Year*, at the Making of Button-molds;" which Buſineſs the ſaid *G. E.* the Pauper had never before been employed in: And the Agreement was " that the ſaid Pauper *G. E.* was *to have nothing* " *for his firſt Month*; for the ſecond Month, he was to have 1 *s.* a " Week; for the third Month, 1 *s.* 6 *d.* a Week; and for the Reſt " of the Year, 2 *s.* a *Week*." And the ſaid *G. E.* the Pauper received, from the ſaid *F. Pope*, his Wages accordingly, and applied them to his own Uſe. And that the ſaid *G. E.* the Pauper ſo worked and *ſerved the ſaid* F. Pope *for the whole Year*; and one Fortnight more, on Account of his being lame within the ſaid Year; which the ſaid *F. Pope* inſiſted on. And during the whole Time the ſaid *G. E.* the Pauper worked and ſerved as aforeſaid with the ſaid *F. Pope, he lodged and dieted with his Father* the ſaid *H. E.* in *Sherborne*. And the ſaid *F. Pope* worked for no other Perſon but the ſaid *H. E.* And alſo during all the Time aforeſaid, the ſaid *F. Pope* and *G. E.* the Pauper *worked at the ſaid* H. E.*'s Houſe: But the ſaid* F. Pope *was a Houſekeeper and an Inhabitant in the ſaid Pariſh of* Sherborne. And that the laſt legal Settlements of the Wife and Children of the ſaid Pauper *G. E.* depend upon the Settlement of the ſaid *Geo. Eyres*, upon the Facts as above ſtated. Whereupon, *&c*, they diſcharge the Order of the two Juſtices.

On *Tueſday* 3d *Feb.* 1740, a Motion was made, by Mr. *Gundry*, to quaſh this Order of Seſſions: For the Settlement of *Humphry* Son *George* is clearly in *Thornford*, though he was born in *Sherborne*; becauſe he was born under a *Certificate* from *Thornford:* And the *Service* in *Sherborne* is out of the Caſe; becauſe a Certificate-perſon has but two Ways to gain a Settlement; *viz.* renting a Tenement the yearly Value of 10 *l.* or executing ſome annual Office in the Pariſh *.

* *V.* 9 & 10 *W.* 3. *c.* 11.

A RULE *was made to ſhew* CAUSE.

Upon ſhewing Cauſe, on the 12th of the ſaid Month, Mr. *Lloyd* and Mr. *Deniſon* argued, on Behalf of the Pariſh of *Thornford*, That the *Son* of a Certificate-man, born *after* the Certificate, and more eſpecially

SHERBORNE and THORNFORD

eſpecially as he was *by an after-taken Wife*, capable of gaining a Settlement by *Service*, in the Pariſh to which his Father came with a Certificate: And that this was a *good* Hiring and Service, to gain him a Settlement in *Sherborne*.

THE main *Difficulty* with the COURT was about the Capability of a *Child* of a *Certificate*-perſon to gain a Settlement *by* SERVICE: Or, whether the Child was not equally reſtrained as it's Parent was, to the two Methods ſpecified in 9 *W.* 3. *c.* 11.

Mr. Juſtice WRIGHT obſerved that the Act of 8 & 9 *W.* 3. *c.* 30. does ſay "though born in the Pariſh, *&c.*" But then it follows, generally, "not having *otherwiſe* acquired a legal Settlement there;" which ſeems *not to confine them* to the two Methods preſcribed to the Certificate-man *himſelf*.

But then comes 9 & 10 *W.* 3. *c.* 11. which ſays "that NO *Perſon or Perſons* WHATSOEVER who come into any Pariſh *under* * a Certificate, ſhall be adjudged by any Act whatſoever to gain a Settlement unleſs by one of the two Ways therein mentioned." Therefore I ſhould think the Method of SERVICE *not* to be ſufficient. For the Child, though born in the Pariſh after the Date of the Certificate, is a CERTIFICATE-PERSON under 8 & 9 *W.* 3: And 9 & 10 *W.* 3. recites that Act at large; and the enacting Clauſe of it is very ſhort; but it is *declaratory* and *explanatory*; and therefore muſt include Children born afterwards, notwithſtanding the Word "COMING."

THE COURT, however, thought the Matter deſerved Conſideration as to *this* Point. But they ſeemed ſatisfied that *afterborn* Children were as much *included* in the Certificate, as thoſe who exiſted at the Date of it: And they ſaw no Objection to the *preſent Hiring and Service*, on Suppoſition that the Child of a Certificate-perſon *could* acquire a Settlement *by this Method*.

It was therefore ordered to STAND OVER.

This Point was now mentioned again on *Friday* 14th *May* 1742: *viz.*

"Whether the *Son of a Certificate-perſon*, born in the Pariſh to "which the Father came by Certificate, *after* the Certificate, can

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* *Note.*—The Words of 9 & 10 *W.* 3. are not "*under* a Certificate." But in the Recital, it is "by what Acts any Perſon coming to inhabit or reſide in any Pariſh *by* VIRTUE of "any ſuch Certificate:" And the enacting Clauſe is That no Perſon or Perſons *whatſoever* "who ſhall come into any Pariſh BY ſuch Certificate," (not *by Virtue* of.)

"gain

"gain a Settlement OTHERWISE *than a Certificate-perſon* HIMSELF "*could.*"

Lord Chief Juſtice LEE.—As to the Point of this Hiring and *Service*—we held that ſufficient before.

As to the other Queſtion—It remained to be conſidered, upon the two Acts of 8 & 9 *W.* 3. *c.* 30. and 9 & 10 *W.* 3. *c.* 11.

Now the firſt of theſe Acts gives Power to remove Children born *after* the Certificate, when they become actually chargeable. But the latter Act ſays, "No Perſon or Perſons whatſoever who ſhall "come into any Pariſh *by Certificate* ſhall be adjudged, *by any Act* "*whatſoever*, to have procured a legal Settlement *therein*; UNLESS "he or they ſhall really and *bonâ fide* take a Leaſe of a Tenement "of the yearly Value of 10 *l.* or ſhall execute ſome annual Office "*in ſuch Pariſh* (being legally placed in ſuch Office.")

I ſhould think this ſubſequent Act to be only a Direction by what Acts Settlements may be gained by Perſons who *are* in Pariſhes *under* Certificates. And this Perſon does, by his Birth, COME *by Certificate* into the Pariſh of *Sherborne*.

Mr. Juſtice WRIGHT was ſtrongly of the ſame Opinion.

Per Cur.—

RULE *to* CONFIRM *the original Order, and* QUASH *the Order of Seſſions; Niſi Cauſa*, in a Week.

At the End of the Week (being *Friday* 21ſt *May*)

Mr. *Lloyd* ſhewed Cauſe, and urged that the explanatory Act * related only to *Perſons themſelves*, coming to reſide in Pariſhes *with their Families*. There is a *Contradiſtinction* expreſſed between the Man *himſelf* coming by Certificate, and his *Family*. He ſaid, this Conſtruction was reaſonable; becauſe it would be very hard that the Children of Certificate-perſons ſhould be excluded from gaining Settlements in the *ſame* Manner as *other* young Perſons might do. And he obſerved that the two Methods of gaining Settlements by Certificate-perſons mentioned in the Act, *viz.* ſerving an annual Office, or renting a Tenement of 10 *l.* a Year, both relate only to *adult* Perſons: From whence he argued that their Children were not meant to be included in the Reſtriction.

* 9 & 10 *W.* 3. *c.* 11.

Mr. *Gundry*, *contra*.—The Conſtruction now advanced would make a Difference, which the Statute never intended, between Children born *before* the Certificate, and thoſe born *after* it.

SHERBORNE *and* THORNFORD

The Children are Certificate-perſons within the Act, as well as the Father: And though Children may not *at firſt* be adult enough to ſerve Offices or rent Tenements; yet they may *grow* old enough *in Time*. The Children have all the *Advantages* of Certificate-perſons; *viz.* to come *without Notice in Writing*, and to remain irremoveable till they become *actually* chargeable. Mr. *Lloyd's* Conſtruction would be inconſiſtent.

Lord Chief Juſtice LEE held the former Act of 8 & 9 *W.* 3. *c.* 30. *ſect.* 1. to extend not only to the Certificate-man himſelf, but likewiſe to *all his Family* and *all* his Children, whether born *before* or *after* the Certificate, coming into Pariſhes. The ſecond Act declares what ſhall gain them a Settlement *in* THAT *Pariſh* to which they come by Certificate; and reſtrains it to two Methods only, which it ſpecifies: And *Service* is neither of theſe two Methods to which it is reſtrained.

Mr. Juſtice CHAPPLE and *Mr. Juſtice* WRIGHT concurred with the Lord Chief Juſtice.

Mr. Juſtice DENISON enlarged more upon the Acts; and obſerved (and all the Court agreed with him) that the Certificate provided for the Security of that Pariſh only * *into which* the Certificate-perſons came to reſide by Virtue of ſuch Certificate: But it did not exclude the Children of a Certificate-man from gaining Settlements in OTHER *Pariſhes*, in the *ſame* Manner as *any Body elſe* might do. So that Mr. *Lloyd's* Objection of the Children of Certificate-men being under particular Hardſhips beyond other Perſons, if this Conſtruction ſhould prevail, does not carry ſo much Force in it as he would have us ſuppoſe.

Poſt. No. 92. 122, 123. 125. 136, 137. S. P.

Per Cur.—

ORDER OF SESSIONS *quaſhed:*
ORIGINAL ORDER *affirmed.*

Vide Poſt. No. 88. 112. S. P.

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* *Note.* The Words of 9 & 10 *W.* 3. are "ſhall be adjudged by any Act whatſoever to "have gained a legal Settlement in SUCH Pariſh, unleſs he or they ſhall really and *bonâ fide* "take a Leaſe of a Tenement of the yearly Value of 10*l.* or ſhall execute ſome annual Office "*in ſuch Pariſh* (being legally placed in ſuch Office.")

Trinity Term

16 Geo. 2. 1742.

Rex *v.* Inhabitants of Helton. No. 66.

Monday 5th *June* 1742.

A BASTARD, born under a *Certificate*, is ſettled in the *certificated* Pariſh.

V. Sir *John Strange* 1168. and *Seſſions Caſes*, Ed. 1750, vol. 2. pa. 249, No. 170. S. C.

TWO Juſtices made an Order for the Removal of *Hannah Beamont*, (a Baſtard-child of a Certificate-woman,) from *Lydlinch* to *Helton*, (the Place of it's Mother's Settlement) both in *Dorſetſhire*.

CASE.—*Mary Beamont*, being then about ſixteen Years of Age (and afterwards the Mother of *Hannah Beamont* the Pauper now removed) lived with her the ſaid *Mary Beamont's* Mother in *Lydlinch*, her ſaid Mother being then the Wife of *Andrew Miles* of *Lydlinch*, Labourer. And ſhe the ſaid *Mary Beamont* being of a looſe Character, in Reſpect of her Chaſtity, in the ſaid Pariſh of *Lydlinch*, and her Place of legal Settlement being in *Helton*, the Overſeers of *Lydlinch*, on the 4th *Feb.* 1734, obtained an Order under the Hands and Seals of, *&c.* two of his Majeſty's Juſtices, *&c.* of *Dorſet*, bearing Date the ſaid 4th of *Feb.* 1734, for the Removal of the ſaid *Mary Beamont* from *Lydlinch* to *Helton* as the Place of her laſt legal Settlement: And ſhe was by the ſaid Order removed accordingly. And on the 7th of the ſaid Month of *February*, and after Service of the ſaid Order, and without appealing from the ſame, the Churchwardens and Overſeers of the Poor of the ſaid Pariſh of *Helton*, by a *Certificate*, under their Hands and Seals bearing Date the ſaid 7th of *February*, 1734, to the ſaid Pariſh of *Lydlinch duly and legally made executed and delivered*, did thereby own and acknowledge the ſaid *Mary Beamont* to be an Inhabitant legally ſettled in the ſaid Pariſh of *Helton*: By Virtue of which Certificate the ſaid *Mary Beamont on the ſame Day* returned and lived again with her ſaid Mother, in the ſaid Pariſh of *Lydlinch*; and whilſt ſhe ſo reſided in the ſaid Pariſh of *Lydlinch* UNDER THE SAID CERTIFICATE, *to wit*, *on* 16*th Feb.* 1735, ſhe the ſaid *Mary Beamont*

HELTON and LYDLINCH.

mont was *delivered of the Pauper*, the ſaid *Hannah Beamont, and who is a* BASTARD-*Child.*

Whereupon and upon Debate of the Matter and hearing Counſel, *&c.* on the Caſe as above ſtated, the Seſſions confirm the Order of the two Juſtices.

Upon *Monday* the 24th of *May* laſt, a Motion was made, by Mr. *Lloyd*, to quaſh theſe Orders.

The Objection was, That the BASTARD's Settlement was in *Lydlinch*, the Pariſh where it was *born:* And it could *not* be ſent to the Place which gave the *Certificate*; as a *legitimate* Child might have been.

Mr. *Gundry*, who ſhewed Cauſe now, on Behalf of the Pariſh of *Lydlinch*, againſt quaſhing the Orders, argued that *Partus ſequitur Ventrem*; and that this Caſe was *within* the *Words* as well as the *Meaning* of the Certificate-act of 9 & 10 *W.* 3. *c.* 30; which makes no Difference between *legitimate* and *illegitimate* Children. And the Pariſh of *Lydlinch* were, by 8 & 9 *W.* 3. *c.* 30. *obliged* to receive the Mother upon her bringing a Certificate from *Helton*. And even when they perceived her to be with Child, they could not remove her *till* ſhe was *brought to Bed* and thereby become actually chargeable to them. *Therefore* it is but juſt that *Helton*, who gave her the Certificate, ſhould maintain the Child.

He ſaid, this was a *Fraud:* And cited 2 *Bulſt.* 349. 2 *Salk.* 474. 2 *Salk.* 532. and a Caſe of the Pariſh of *New Windſor*, *Tr.* 5 *G.* 1. about one *Pizzey*, a Certificate-man from *White Waltham*, who had Baſtard-children born in *New Windſor*. [*V.* Sir *John Strange* 186. where it is reported quite againſt him.]

Mr. *Lloyd*, on the other Side, not only inſiſted that all Baſtards are ſettled where they are born; but pretended that the Certificate ſtated upon this Order was *not purſuant to the Certificate-act*; and conſequently the Pariſh of *Lydlinch* was not bound to receive the Mother of this Baſtard: For it is not ſtated to be "*allowed* by two "Juſtices," nor to be "*atteſted* by two Witneſſes:" Therefore it is as *no* Certificate at all.

Lord Chief Juſtice LEE.—This Woman was removed from *Lydlinch* to *Helton* by an Order of two Juſtices: And three Days afterwards, the Pariſh of *Helton* ſent her back to *Lydlinch*, with a *Certificate, acknowledging her to be their Pariſhioner*. She was, a little *more than a Year afterwards*, there *delivered of a Baſtard-child*; which is the Pauper now removed from *Lydlinch* to *Helton*.

As

HELTON and LYDLINCH.

As to the Certificate—it is ſtated to be " *duly and legally* made " executed and delivered." Therefore we have no Reaſon to take it otherwiſe, than that it was ſuch a Certificate as the Pariſh were obliged to ſubmit to. If the Certificate had been doubted of, with Regard to its Validity, there would have been negative Words inſerted in the ſpecial State of the Caſe: This, *as ſtated*, is good to a *reaſonable* Intendment.

I apprehend that we cannot in any Degree conſider this as a *Fraud*. There appears none upon the Fact *as here ſtated* by the Juſtices. And it is plain that ſhe was *not* with Child *when* the Certificate was *given:* For ſhe was not delivered till *above a Year* after. Beſides, it is a certain Rule " that *Fraud muſt be expreſsly ſtated*; or elſe " the Court can take no Notice of any." However, here does not appear any Ground or Suſpicion of Fraud, upon the Facts ſtated.

The Caſes cited by the Counſel who argued for quaſhing the Orders, do not come up to the Point of the preſent Caſe. That in *Bulſtrode* was apparent Practice, and went upon the Fraud. And thoſe in *Salkeld* * were illegal Removals of Women big with Child, and very ſoon brought to Bed. And if a Pauper big with Child is ſent by an Order of Removal to a Pariſh; and *before* the Pariſh can relieve themſelves, the Pauper is brought to Bed; the Pariſh ſhall be relieved, if that Order is afterwards reverſed. For every Thing that happens under an illegal Removal ſhall be chargeable upon the Pariſh from whence the illegal Removal was made; and the Birth of the Child in the other Pariſh was occaſioned by the wrongful Removal of the Mother to that Pariſh.

* 2 *Salk.* 474. the Caſe of *Much Waltham* and *Peram:* And 532, *Weſtbury* and *Coſton.*

So a Child born in a Gaol is of a different Conſideration from the preſent: There the Woman is in *Cuſtodia Legis*, to *anſwer* the Offence charged upon her; but in *other* Reſpects, ſhe ſhall be conſidered as a Pariſhioner of her own Pariſh.

It ſeems to depend entirely on the Statute of King *William* †; which obliges the Pariſh to receive a Certificate-perſon with his or her Family and Children, and to ſuffer them to continue there till actually chargeable: *Then* indeed the Certificate-perſon and his Children (though born in the Pariſh) may be removed.

† 8 & 9 *W.* 3. *c.* 30

The Queſtion is, WHOM they have a Power to remove *as* CHILDREN.

Now BASTARD-children can not be conſidered *as the Children of the Certificate-perſon:* They are NO-BODY's *Children*; they are *Filii Populi*. Indeed the Caſe between the Pariſhes of *New Windſor* and *White*

HELTON and LYDLINCH.

White Waltham is cited as being otherwiſe. That may therefore be looked into.

N. B. Mr. *Chiffinch* (as *Amicus Curiæ*) ſaid He remembered that the Pariſh who gave the Certificate was there holden to be *concluded* to ſay "that the Woman was *not* the Man's "Wife;" having *certified and acknowledged that ſhe* WAS * "his Wife."

LEE *Chief Juſtice.—That* may indeed be; and rightly enough. But I know of no Caſe that conſiders *Baſtards* as the CHILDREN *of any one.*

Therefore I think the Act cannot be conſtrued into ſuch a Meaning; and that this Removal cannot be maintained, which ſends the Baſtard away from the Place where born, under the Notion of a *Child* of the Certificate-perſon.

Mr. Juſtice CHAPPLE concurred with the Chief Juſtice, both as to the Certificate, and the Conſtruction of 8 & 9. *W.* 3. *c.* 30.—The Word "*Family*," and the Word "*Children*," in this Act, muſt mean *legitimate* Children: So that *Baſtards* are not even within the *Words* of the Act.

Mr. Juſtice WRIGHT and *Mr. Juſtice* DENISON were of the ſame Opinion, on both Points. And the former ſaid that a *Baſtard is (in general) ſettled where it is born:* Therefore *Partus* non *ſequitur Ventrem* in *this* Caſe. And in the Caſe of *New Windſor* and *White Waltham*, the Court declared "that illegitimate Children "were No-body's Children." But *White Waltham* had concluded themſelves from ſaying "that they *were* illegitimate."

Here is *no Fraud* that appears; nor can we preſume any: *Odioſa non præſumuntur.* [*V. ante*, pa. 167, accord.]

Per Cur.—

RULE *made abſolute to* QUASH *both the Orders.*

BOTH ORDERS *quaſhed.*

V. Poſt. No. 86. *Rex* v. *Inhabitants of Headcorn, Trin.* 1743. 18 & 19 *G.* 2. See alſo *Poſt.* No. 90. S. P. But ſee *Poſt* No. 201. *contra.*

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* So it was: And it was alſo holden expreſsly (as the Court now reſolve) "that a *Baſtard* "can not be ſent to the Pariſh who gave its Parent a Certificate." And it was agreed that the Word "*Children*" meant *legitimate* Children *only.* [I have a MSS Report of this Caſe.]

Michaelmas

Michaelmas Term

16 Geo. 2. 1742.

Rex *v.* Inhabitants of Woodcheſter

No. 67.

Thurſday 11th *Nov.* 1742.

Order unappealed from is *final*, even as to *after born Children*.

V. Sir *John Strange* 1172. S. C.

TWO Juſtices made an Order, bearing Date on the 22d of *February* 1741, 15 *G.* 2. for the Removal of *Thomas Hankin*, *Heſter* (of the Age of about ſeven Years,) *Elizabeth* (aged about five Years,) and *Sarah* (aged about three Years,) his three Daughters by *Heſter* his Wife lately deceaſed, from *Nympſfield* to *Woodcheſter* (both in *Glouceſterſhire:*) and the Seſſions, upon Appeal, confirmed this Order.

The Caſe ſtated on the Order of Seſſions was this——

BEFORE *the Births* of the ſaid *Heſter*, *Elizabeth* and *Sarah*, the three Daughters of the ſaid *Thomas Hankin* by *Heſter* his Wife, or either of them, the ſaid *T. H.* and *Heſter his Wife* were removed from the ſaid Pariſh of *Nympſfield* to the ſaid Pariſh of *Woodcheſter*, by Virtue of an Order of two Juſtices of the Peace of the ſaid County of *Glouceſter (Quorum unus) bearing Date the 15th Day of February* ONE THOUSAND SEVEN HUNDRED THIRTY-ONE: And ſuch laſt-mentioned Order was *confirmed* at the General Quarter-Seſſions of the Peace of and for the ſaid County of *Glouceſter then next after the Date* of the ſame Order, by the Court, *for Want of an Appeal* thereto. And this Court [of Seſſions] now on hearing this preſent Appeal touching the Settlement of the ſaid *Heſter*, *Elizabeth* and *Sarah*, the Daughters of the ſaid *T. H.* and *Heſter* his Wife, did determine that the ſaid Pariſh of *Woodcheſter ought* NOT *to be permitted to give any Evidence* " *that the ſaid* T. H. *was mar-*" *ried to* ANOTHER WOMAN *before his Intermarriage with the ſaid* " Heſter *the Mother, ſo removed with him under the ſaid former Or-*" *der; and that ſuch other Woman is ſtill living:*" Which the ſaid Pariſh of *Woodcheſter* now, on hearing this preſent Appeal, alledged they were ready, and *offered* to do.

WOODCHESTER *and* NYMPSFIELD.

On *Saturday* the 26th of *June* laſt, a Motion was made, by Mr. *Ford*, to quaſh theſe Orders.

His Objection to this Seſſions-order, as far as it related to the three *Children*, who were all *born ſubſequent to the firſt Order*, was, That the Pariſh of *Woodcheſter ought* to have been permitted to give Evidence " that *Thomas Hankin* the Pauper *was married to another* " *Woman* before his Intermarriage with *Heſter* their Mother, who " was removed with him by the former Order;" and " of ſuch *other* " *Woman being ſtill living*." For, as his former Wife was living, the three Children by *Heſter*, muſt conſequently be *Baſtards*, and were ſettled where they were *born:* (Which was in *Nympsfield.*)

His Objection went *only* to the *Children;* For he acknowledged that the Man himſelf was fixed upon *Woodcheſter* by the former Order unappealed from.

But he inſiſted that the Pariſh of *Woodcheſter* were *not* concluded by that Order, though unappealed from, with regard to theſe *Children* who were born ſubſequent to it.

The Counſel who ſhewed Cauſe now againſt quaſhing the Orders (Mr. *John Yate*, long ſince deceaſed) laid it down as a ſettled Rule, " that Orders of Removal confirmed at Seſſions as being unappeal- " ed from, are *concluſive upon the Pariſh charged with the Paupers,* " *againſt all the World.*" The only Difference between the firſt and ſecond Orders of Removal, in the preſent Inſtance, is the *Addition of the Children:* For the Removal is of the *ſame Father and Mother*; and from and to the *ſame Pariſhes.*

The Pariſh of *Woodcheſter* are now *eſtopped* to ſay " that they " were *not* Man and Wife." It may be urged, " That the Marriage " is not the Matter *expreſsly* adjudged." But it is adjudged *as much* as it poſſibly could be in an *Order of Removal.*

The Counſel for *Woodcheſter*, who argued in Support of the Rule (Sir *John Strange* and Mr. *Ford*,) agreed that the Order confirmed and unappealed from was concluſive upon them, as to the *Man:* But they argued that it was *not* ſo as to the *Children.*

ESTOPPELS are not to be favoured. They ought to be plain, poſitive and certain; not argumentative. Now there *may* be a Caſe ſuppoſed where *Woodcheſter could not* have appealed, even though they had *known* " that ſhe was *not* his Wife:" And that is, ſuppoſing her *own* Settlement was at *Woodcheſter.*

The mere *calling* her his Wife, does not *prove* her to be ſo, or ſtop us from ſhewing the contrary. The preſent Eſtoppel tends to do *Injuſtice;*

juſtice; and therefore ſhall not conclude the Pariſh of *Woodcheſter*.

WOODCHESTER and NYMPSFIELD.

Lord Chief Juſtice LEE.—It muſt be agreed that the original Order confirmed by the Seſſions is *final* as to the *Man and Wife*. Then the Man and the Children, being again at *Nympsfield*, are, a ſecond Time, removed to *Woodcheſter* as their Settlement: And upon Appeal, it is attempted to give Evidence "that the Father and "Mother were NOT *Man and Wife*." But *that* muſt have been examined and inquired into by the two Juſtices who made the original Order: For they have removed theſe two Perſons *as* Man and Wife.

It ſeems a very foreign Intendment to ſuppoſe, "that the Mother "had any *other* Right to the Settlement, than *as* the Wife of *Han*-"*kin*." And if ſhe was removed *as his Wife*, her Settlement has been *determined*. And the preſent Inquiry relating to the Children muſt *depend* upon her Settlement *as* Wife to *Hankin*.

Mr. Juſtice CHAPPLE.—An Order of Removal confirmed by the Seſſions upon the *Merits*, is concluſive againſt every Body: And ſo it is alſo, if confirmed by them *without Appeal*. This Woman was removed *as* Wife to *Hankin*: We can't intend that ſhe had any *other* Settlement. It ſeems to me to be an Eſtoppel.

Mr. Juſtice WRIGHT and *Mr. Juſtice* DENISON thought this exactly within the Caſe of *New Windſor* and *White Waltham*, *Tr.* 5 *G.* 1. *B. R.** where it was determined "that if a Pariſh give "a Certificate to a Man and his Wife, they are *bound* both as to "the Man and Wife and alſo as to the Children: And they can not "be admitted to diſpute the Validity of the Marriage." Now does not this *confirmed Order* bind as much as the *Certificate* binds? 'Tis a *Judgment* of a Court who had a proper Juriſdiction; and is therefore *as ſtrong* as the Acknowledgment by a Certificate.

* See it in 1 Sir *John Strange* 186.

Mr. SOLICITOR GENERAL (STRANGE) would have diſtinguiſhed this Certificate-caſe of *New Windſor* and *White Waltham* from the preſent: But

THE COURT ſaid they could ſee no Diſtinction between them; and were ſatisfied that they ought not to be let in to controvert the Queſtion of the Marriage over again. The Settlement of the *Children* is a *derivative* Settlement: It muſt and will *depend* upon the Validity of the Mother's Marriage, and can't be controverted without controverting the Marriage, which has been already admitted. Therefore

WOODCHESTER *and* NYMPSFIELD.

Per Cur.

ORDERS AFFIRMED.

See *Rex* v. *Inhabitants of Silcheſter*, 1ſt *Feb.* 1766, Paſt. No. 176. See alſo *ante* No. 60, *Poſt.* No. 96. 204. S. P.

No. 68.

Monday 22d *Nov.* 1742.

Order quaſhed; having been made by *two* Juſtices, *one* of whom was an *Inhabitant*, of the Pariſh from which the Pauper was removed, and therefore *intereſted*.

V. Sir *John Strange* 1173, S. C. (as to Part of it.)

Rex *v.* Inhabitants of Great Chart.

TWO Juſtices made an Order for the Removal of *Stephen Martin* from *Great Chart* in *Kent* to *Kennington*: And the Seſſions, upon Appeal, quaſhed this Order.

The Order of Seſſions is as follows—Upon an Appeal made unto this Court by the Inhabitants of the Pariſh of *Kennington* in this County, from an Order made by two of his Majeſty's Juſtices of the Peace of this County, for removing of one *Stephen Martin*, a poor Man, from the Pariſh of *Great Chart* in this County to the ſaid Pariſh of *Kennington*, there to be provided for; and upon reading the ſaid Order and hearing of Counſel on both Sides, It is ordered by this Court that the ſaid Order made by the ſaid Juſtices ſhall be and is hereby, in all Points, quaſhed; becauſe it appears unto this Court, "that *John Toke*, Eſq; one of the Juſtices who "*ſigned* the ſaid Order, was *an* INHABITANT *in the ſaid Pariſh of* "*Great Chart*——"

N. B. Thus it ſtood *originally*: But by a Rule by Conſent, made in *Trinity* Term laſt, the following Words were inſerted at the End of it: *viz.*

"*At the* TIME *of his ſigning the ſaid original Order*; *and was* "THEN ASSESSED AND PAID *to the Relief of the Poor of the ſaid* "*Pariſh of* Great Chart."

Then the Order of Seſſions proceeds thus—

And it is further ordered by this Court; That the *Coſts of Maintenance* of the ſaid *Stephen Martin ſince the Time of his Removal to the ſaid Pariſh of Kennington* SHALL ABIDE THE EVENT of the Cauſe; in Caſe the ſaid Pariſh of *Great Chart* ſhall think proper, by *another* Order, to remove the ſaid *Stephen Martin* to the ſaid Pariſh of *Kennington*, and the Inhabitants of *Kennington* appeal to this Court from the ſame.

GREAT CHART and KENNINGTON.

On *Tuesday* the 18th of *May* last a Motion was made, by Mr. *Ludford*, to quash this Order of Sessions.

His Objection was, that the Justices at Sessions had given a *bad Reason* for quashing the original Order: They do not enter into the Merits; but quash the Order, because *John Toke*, Esq; one of the Justices who made it WAS *an* INHABITANT of *Great Chart*. But though he was an *Inhabitant* of the Parish, yet he might have *no Interest* in the Matter of this Removal.

Upon shewing Cause on *Monday* 31st of *May*, two other Objections were added by Mr. *Ludford*.

2*d Objection*. The Order says—"The Justice WAS *an Inhabitant*," indefinitely; without alledging "that he was so *at the* "*Time of making the Order*."

3*d Objection*. The Sessions have ordered the *Costs of maintaining* the Pauper since the Time of his Removal, *to* ATTEND THE EVENT *of the Cause*: Which they *cannot* do; they have *no* such Jurisdiction.

Lord Chief Justice LEE thought the Case not sufficiently stated; it being only said "that Mr. *Toke* (who signed the Order) "*was an Inhabitant*." Special Orders ought to be as certain as special Verdicts. *If* the Justice was *really* interested, it was very improper for him to join in an Order of Removal from the Parish in which he was interested. It should be more fully stated. Probably, *Mr.* Toke *was chargeable as an Inhabitant*.

The RULE *was therefore* ENLARGED.

Afterward (on *Wednesday* 7th *July*) the Counsel for *Great Chart* offered to *admit* "that Mr. *Toke* was an Inhabitant there *at the* "*Time* of making the Order; and was *charged and chargeable to the* "*Poor*."

But the COURT said it ought to be *actually* amended before they could determine upon it: For it would not be proper for them to give their Opinions upon an *imperfect* Order.—Therefore, for the present, they only made a Rule that the Order should be amended as aforesaid, by Consent.

THE ORDER being now *amended*; and it appearing "that Mr. "*Toke* was an Inhabitant of *Great Chart at the Time* of making "the Order, and CHARGED AND CHARGEABLE AND PAID TO "THE POOR'S RATE;" the Counsel for *Great Chart* endeavoured to answer the Objection to his being *both Judge and Party*, by insisting on the PRACTICE, and also on the *liberal Words* of the positive

GREAT CHART and KENNINGTON.

tive Law of 13 & 14 *C.* 2. which directs ANY of the Juſtices of the Diviſion to exerciſe the Juriſdiction; and which has *no negative Words*.

They compared it to Orders of *Baſtardy*: Where the Juſtices *next* * *to the Pariſh-church* where the Child is born are ſingled out as the proper Perſons: And yet they are moſt likely to be intereſted.

* *V.* 18 *Eliz.* c. 3. § 2.

Such a *trifling* Intereſt as this muſt be, can't be ſuppoſed to bias a Magiſtrate.

This is little more than a *miniſterial* Act: And an *Appeal* lies from it.

In *Corporations*, which often conſiſt of only one Pariſh, and have excluſive Juriſdiction;—If the Corporation Juſtice cannot remove the Pauper he would be irremoveable.

They alſo enforced their third Objection; and inſiſted that the Seſſions could not order Coſts to *attend an Event*; but muſt either give them or not give them, at the *Time* when they make their Order. To prove which, they cited *Rex.* v. *Inhabitants of Nottingham*, in 5 G. 2.

Lord Chief Juſtice LEE had no Doubt, as to the *main Queſtion*.

It is now agreed to be an Order made by two Juſtices, of whom one is *contributory* to the Maintenance of the Poor of the Pariſh *from which* the Pauper is removed. Therefore he moſt apparently is INTERESTED.

This is certainly a *judicial* Act. And no Rule of Law or of Reaſon is more fixed *, than "that a *Judge ought to ſtand* DISINTE-"RESTED." A Pariſhioner could not by common Law have been a Witneſs. And the Rule is *ſtricter* as to *Judges* than it is even as to *Witneſſes*: For a Juror ſhall not be related to the Parties; but a Witneſs may. This making an Order of Removal has been always conſidered as a *judicial* Act. And the *Appeal* lying from it, makes no Difference: For ſtill it is an *intereſted Judge* that has determined the Queſtion *originally* and in the *firſt* Inſtance.

As to the Act of Parliament's mentioning "*any* Juſtice of the "Diviſion"—as a proper Perſon to exerciſe the Juriſdiction—the Conſtruction muſt confine it to *legal* Juſtices: It does not take away *legal Exceptions*; nor mean to do.

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* *V. Brook's Abridgment*, Title "Judges, Juſtices, &c." *pl.* 1. (*Juge & Partie.*) and 2 *Rolle's Abridgment*, pa. 93. Title "Judges," *pl.* 11. and *Salk.* 396, the Mayor of *Hertford's* Caſe. Alſo the Caſe of Dr. *Chaſe*, Chancellor of *Oxford*, in the *Year-book* of 8 *H.* 6. fo. 19 *b* to 21 *b*. And *Bro. Conuſaunt, pl.* 22. *Bro. Patents, pl.* 106. *Hobart* 85. *Day* v. *Savadge*. 8 *Co.* 118 *a*. Dr. *Bonham's* Caſe. *Crompton's Juſt. of Peace* 68. And 2 *Salk.* 607, the Caſe of *Foxham Tithing*.

The

The ſuppoſed Caſe of *Corporation*-juſtices is not likely to happen. But if it ſhould, a proper Anſwer was given—"That the excluſive "Juriſdiction might not perhaps hold, where it would occaſion a "*Failure of Juſtice.*" The Caſe of my Lord *Derby*, in 12 *Co.* 114. and 4 *Inſt.* 213. and Dr. *Chaſe's* Caſe, Chancellor of *Oxford*, in 8 *H.* 6. 19. are material to that Purpoſe. I think there would be no great Difficulty ariſing from that Suppoſition. GREAT CHART and KENNINGTON.

As to any *Inconveniences* that may be ſuggeſted from Imagination —"The *keeping ſtrictly to the Rule of not permitting a Man to be "Judge in his own Cauſe*," is of more Conſequence than any ſuch ſuppoſed Inconveniences can weigh againſt.

As to the Caſe of *Baſtardy*—the two Juſtices are to be Juſtices in or *next to* "the *Limits* where the Pariſh-church is, within which "Pariſh ſuch Baſtard ſhall be born *:" But it does not ſay, "IN "*the Pariſh*" or "Juſtices *intereſted.*" If there be *no other* Juſtice in the Pariſh, they may eaſily go to *another* Juſtice near it. I remember when my Lord *Raymond* would not give any Opinion in the Caſe of *Abbots Langley*, becauſe it was his *own* Pariſh. * *V.* 18. *Eliz.* c. 3. *ſ.* 2.

As to the COSTS I doubt the Juſtices at Seſſions *can not* give them in this *eventual* Manner. The Seſſions can not order *Coſts* to abide the Event of the Cauſe.

THE THREE OTHER JUDGES were unanimous, and held it to be a *fundamental Rule* of Reaſon and of natural Juſtice, "That *no* "*Man* can be Judge in his *own* Cauſe." ‖ Mr. *Toke* is here ſtated *to be intereſted:* He therefore could not be a Judge.

As to the third Objection—They held *that Part* of the Order of Seſſions relating to theſe Coſts, to be *void.*

Per Cur. unanimouſly—The Order of Seſſions muſt be affirmed, as to that Part of it which quaſhes the original Order of the two Juſtices; but quaſhed, as to the latter Part of it, which or-

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‖ I can not help tranſcribing from the *Year-book* of 8 *H.* 6. a very ſingular Paſſage: It is in fo. 20 *b.* Serj. *Rolf*, who argued for the Chancellor of *Oxenford*, ſays——"Jeo Vous dirra "un Fable En aſcuns temps fuit un Pape: et aver' fait un graund Offence. Et le Car- "dinalz viendroient a luy, et diſoient a luy—*Peccaſti* Et il dit—*Judica me.* Et ils diſoient "—*Non poſſumus*; quia Caput es Eccleſiæ: *Judica Te ipſum.* Et l'Apoſtoil dit—*Judico me* "*cremari*: Et fuit combuſtus. Et en ce' cas, il fuit ſon Juge demeſne: Et apres fuit un Seint." Et iſſint (ſays the Serjeant) *neſt pas* inconvenient, que un Home ſoit ſon Juge demeſne.

Olaus Magnus (de Gentibus Septentrionalibus) tells a like Story of a Northern King, who was hanged in Purſuance of his own Sentence: But it don't appear that he was afterwards made a Saint.

ders

GREAT CHART *and* KENNINGTON.

ders the Coſts of maintaining the Pauper to attend the *Event of the Cauſe*.

RULE *accordingly*.

*** But by 16 *G.* 2. *c.* 18. *ſect.* 1. Juſtices of Peace are empowered to act in their own Pariſhes.

No. 69. Rex *v.* Inhabitants of the Townſhip of Holbeck in the Burrough of Leeds.

Saturday 27th *Nov.* 1742.

An Indenture of Apprenticeſhip, *unſtamped*, is VOID; and can not be given in *Evidence*.

TWO Juſtices made an Order for the Removal of *Peter Orange*, *Mary* his Wife, and *John*, *Jane* and *Joſeph* their Children, from *Holbeck* to *Gilderſon* (both in the Weſt Riding of *Yorkſhire*:) And, upon Appeal, the Seſſions diſcharged their Order.

CASE—*Peter Orange* the Pauper was *born in Gilderſon*, then the Place of his *Father's* Settlement. At the Age of nine, he was put APPRENTICE, by the *Churchwardens and Overſeers of the Poor* of *Gilderſon*, to *S. G.* of the ſame Place, *by Indenture*; to ſerve till he attained the full Age of twenty-four Years: but the ſaid INDENTURE being produced, the ſame appears NOT *to be upon* STAMPT-*Paper*. The Pauper *P. O.* immediately went into the Service of the ſaid *S. G.* who ſoon aſſigned him to one *Th.* of *Gilderſon* aforeſaid; with whom he lived for ſome Years. *Th.* aſſigned him to one *C.* of *Beeſton*; with whom he ſerved, in *Beeſton*, as an Apprentice for ten Years, and till he attained the full Age of twenty-four. (But *neither* of theſe Aſſignments were *by Writing*.) That immediately after the ſaid ten Years Service, and without ever departing out of the Service of his ſaid Maſter, he was *hired* by the ſaid *C.* for one Year; of which, he *ſerved him about three Quarters* of a Year, and *then left* the Service; and has ſince done nothing to gain a Settlement. That the other Perſons have no Settlement in their own Right; but are only intitled to Settlements derivative from him. The Court of Seſſions, being of Opinion "that *P. O. gained* a le-"gal Settlement at *Beeſton*, diſcharge the Order of Removal, and "order Damages to be paid by the Townſhip of *Holbeck* to the "Townſhip of *Gilderſon*."

Upon *Tueſday* 17th of *November* 1741, a Motion was made, by Mr. *Deniſon*, to quaſh this Order of Seſſions; becauſe the *Indenture* was *not ſtampt* according to the Act of 8 *Ann. c.* 9. *ſect.* 39. (which Act

Act is, by 9 *Ann. c.* 21. *ſect.* 7. made perpetual, as to theſe Duties.) By this 39th Section, Indentures not ſtamped or tendered to be ſtampt, ſhall be *void*, and not available to *any* Purpoſe whatſoever; and the Apprentice ſhall have *no* Privilege of Freedom or uſing his Trade. HOLBECK and GILDERSON.

On ſhewing Cauſe upon the 27th of *January* following—after being argued by Mr. *Legge*, in Support of the Order of Seſſions, and Mr. *Deniſon* and Mr. *Cookſon* againſt it—

Lord Chief Juſtice LEE ſaid it depended upon the Acts of Parliament; which they would look into and conſider.

It was now again argued by Mr. *Legge* and Mr. *Bootle*.

Mr. *Legge*, who ſhewed Cauſe againſt quaſhing the Order of Seſſions, ſaid the Act of 5 *W. & M. c.* 21. was the firſt Act of Parliament that lays a Duty upon * Indentures; (*viz.* 6*d.* upon each Piece of Parchment on which Indentures are written;) and ſays † "it ſhall not be given in Evidence or admitted to be *available in* "*any Court, till* the Duty and alſo a Penalty of 5*l.* be paid, and "the Parchment or Paper be ſtamped." But *afterwards* they may be, and in daily Practice are. But this Act does *not* make them void to *all Intents and Purpoſes*; as the 8 *Ann. c.* 9. does.

* *V. Sect.* 3. (the 3d and 6th Articles)

† *V. Sect.* 11.

The 9 & 10 *W.* 3. *c.* 25. *ſect.* 30. adds 6*d.* but expreſsly *excepts* the Indentures of poor Perſons: "*Except* Indentures for binding "*poor Pariſh-children* Apprentices."

The 8 *Ann. c.* 9. is the only Act that makes unſtampt Indentures *void to all Intents and Purpoſes*: But that Act has an expreſs Exception as to *Charities*; *viz. ſect.* 40. "Money given to put out Ap-"prentices either by *Pariſhes* or public Charities ſhall not pay *any* "Duty." Therefore the preſent Caſe *reſts on* 5 *W. & M. c.* 21.

It is not like the Caſe of *Cuerden* and *Leyland*: Which was not the Caſe of a *Pariſh* Apprentice; but a Caſe where Money was paid by the Parent to the Maſter. [*V.* Sir *John Strange* 903; and *ante*, pa. 92 to 96.]

By 13 & 14 *C.* 2. *c.* 12. he gained a Settlement at *Beeſton*, by *reſiding in it forty Days irremoveable*. Indeed 3 & 4 *W. & M. c.* 11. *ſect.* 3. requires *Notice*: But the 8th Section *expreſsly excepts Apprentices bound by Indenture*. This Perſon, therefore, being *an Apprentice by Indenture* (not void to *all* Intents and Purpoſes,) and having inhabited forty Days in *Beeſton*, has *gained* a Settlement there within 13 & 14 *C.* 2. *c.* 12.

He moreover objected to the *original* Order. 1ſt, The Burrough of *Leeds* is *not* mentioned in the *Body* of the Order, but only in the *Margin*.

HOLBECK and GILDERSON.

Margin. It does not appear, therefore, that the two Juſtices had *Juriſdiction* to make this Order.

2dly, The Words of Adjudication are—"*was* the laſt Place of "legal Settlement;" inſtead of adjudging "that it *is* the laſt "Place of legal Settlement" of the Pauper. It ought to have been in the preſent Tenſe.

Mr. *Bootle* denied that this Caſe was within the Exception of the 8th Section of 3 & 4 *W. & M. c.* 11. becauſe this was *no* Indenture of Apprenticeſhip: It was *totally* UNAVAILABLE *in any Court*, having *never* been ſtamped. Therefore the Court of Seſſions *could not* admit it as Evidence, or have any Regard at all to it.

He did not rely upon the other two Acts, of 9 *W.* 3. *c.* 25. or 8 *Ann. c.* 9. but altogether on 5 *W. & M. c.* 21. which is *not repealed* by either of them.

As to the two Objections to the original Order—1ſt, There is a ſufficient Reference to the Margin. 2d, The Adjudication is agreeable to the very Words of the Statute.

Lord Chief Juſtice LEE.—As to the *Juriſdiction* of the Juſtices—I take it to be ſettled, "that in ORDERS, the Margin is to "be conſidered as *Part* of the Order, and a *plain clear Reference to* "*it is ſufficient* *." Here the *Margin* is—"Burrough of *Leeds:*" And the Direction is—"To the Churchwardens and Overſeers of "the Townſhip of *Holbeck in the ſaid Burrough.*" This Reference is ſufficient in an *Order*.

* *Ante*, No. 12. 45. *Poſt.* No. 204. S.P.

As to the 2d Exception to the Order of the two Juſtices—The Act of 13 & 14 *C.* 2. *c.* 12. is—"Where they *were* laſt legally "ſettled." This Adjudication "that *Gilderſon was* the laſt Place, "*&c.*" is well enough: It muſt be taken, that it was ſo *at the Time of the Adjudication*.

Adjudication, in the *paſt* Tenſe, is ſufficient.

As to the *main Point*, (which is upon the Order of *Seſſions*)—There is *not* a ſufficient *Service* under the *Hiring* for a Year. Therefore the Caſe muſt ſtand ſingly upon the Foot of the Service under the *Apprenticeſhip*.

Now as to *that*—I think the *Indenture* can *not be available in Evidence* in *any* Court, by the *expreſs* Words of the Act of 5 *W. & M. c.* 21. *ſect.* 11. which ſtands unrepealed by any of the ſubſequent Acts. And yet this Indenture was *neceſſary* Evidence to make out the Proof of a *Binding by Indenture*: For that *Binding* could be *no otherwiſe* proved than *by* the Indenture. But this Indenture, being *unſtamped*, was *not admiſſible* as a Proof of the Thing: It could not be "given in Evidence, or admitted to be available." And yet it *muſt*

Ante, No. 51. *contra. Poſt.* No. 104. pa. 735. *acc.*

HOLBECK and GILDERSON.

be taken, upon the State of this Caſe, that the Indenture, though unſtamped, *was* RECEIVED *in Evidence* by the Court of Seſſions.

Therefore the Order of the two Juſtices made for removing the Paupers to *Gilderſon*, *Peter's* original Settlement, ought to be affirmed; and the Order of Seſſions quaſhed.

THE THREE OTHER JUDGES concurred; and held the Difference between *Orders* and *Indictments* to be, "that in *Orders*, "the *Margin* is to be conſidered as *Part* of the Order, and a *clear* "*plain Reference* to it is ſufficient:" But in Indictments, the County muſt be expreſſed in the *Body*; and a Reference to the Margin is *not* ſufficient. They thought the Adjudication in the *preterperfect* Tenſe ("*was* the laſt Place, &c.") to be well enough: And Mr. Juſtice *Wright* cited a Caſe in *P.* 13 *G.* 1. *B. R. Rex* v. *Inhabitants of Oulton** ; where this Objection was overruled; as it alſo was, in the Caſe of *Hackney*, and many other Caſes. And as to the *unſtamped* Indenture—That could not legally be given in Evidence to the Seſſions, or admitted to be *available* in Law or Equity: And therefore they *ought* to have had *no Regard* to it.

* *V. Seſſ. Caſes* Ed. 1750. Vol. 2. No. 76. pa. 74. Exception the 4th.

Per Cur. unanimouſly and clearly,

ORDER *of Seſſions* QUASHED:

ORDER *of two Juſtices* AFFIRMED.

V. Poſt. No. 80. *Rex* v. *Inhabitants of Llanvair Dyffryn Clwyd, Wedneſday* 30th *May* 1744. See alſo *Poſt.* No. 120. *Rex* v. *Inhabitants of Yarmouth.*

Hilary Term

16 Geo. 2. 1742.

No. 70. **Rex** *v.* **Inhabitants of Madley.**

Thurſday 27th *Jan.* 1742.

Order of two Juſtices for the County of SHROPSHIRE, good; though an inſufficient *Reaſon* be ſtated, as the Ground of it.

TWO Juſtices made an Order for the Removal of *Richard Johnſon*, *Mary* his Wife, and *Elizabeth* their Daughter, from *Lillyſhall* in the County of *Salop* to *Madley* in the County of *Staffordſ*: And the Seſſions confirmed it, generally.

On the laſt *Friday* in *Michaelmas* Term 1742, Mr. *Jarvis* moved to quaſh theſe two Orders.

The Exceptions taken to the original Order, were theſe—

1ſt, It does not appear that the two Juſtices who made it were Juſtices of or for *any County*; it being only ſaid "for the County "of *Shropſhire*:" And there is no ſuch County as the County of *Shropſhire*.

2d, The *Service* is not ſufficiently ſtated in the original Order, which ſets forth a Reaſon, that is *not a ſufficient* one: Whereas if the Juſtices ſet out a Reaſon at all, it muſt be a good one. *This* is only, "That he *lived* a hired Servant, a whole Year." Now, this he might do; and yet *not* have been HIRED FOR a whole Year.

3d, It is bad clearly, *as to the Daughter*; for not ſetting forth her *Age*. *Rex* v. *Inhabitants of Trinity Pariſh in Cheſter*, *M.* 11 *G.* 1. is in Point. [*V. Seſſions Caſes*, Edit. 1750. Vol. 2. No. 74. pa. 70]

In Anſwer to theſe Exceptions, it was ſaid—

1ſt, "*Shropſhire*" is the common Appellation of the County. 2dly, The Seſſions do not give their Reaſons: Therefore the Reaſons upon which they proceeded muſt be taken to be *right* ones. However, he is ſtated to have *lived as a hired Servant for a whole Year*, and to have *received a Year's Wages*: And this is ſufficient, to a common Intent, to mean a *Hiring and Service for a Year*. It is too

MADLEY and LILLYS-HALL.

nice a Criticiſm, to ſuppoſe that it might *poſſibly* be a Hiring for two ſeparate Half-years. Beſides, they expreſsly ſay, " that *Madley* " was the Place of his laſt legal Settlement." 3dly, the Order ſtates *Elizabeth* to be an *Infant*: And it muſt have appeared to the Juſtices, that ſhe was ſo young a Child as that ſhe ought to go with the Parent, for Nurture.

The Age of a *Child* muſt be ſet forth, or its Settlement adjudged. *Vide Ante*, No. 26. 29. 45. 57. 63. *Poſt*. No. 72, 73. S. P.

Lord Chief Juſtice LEE.—As to the third Exception—You muſt either ſet forth the Age of the Child, (to ſhew that it ought to go with the Parent for Nurture;) or adjudge it's Settlement: But *neither* of theſe being here done, the Order is naught *as to that*.

As to the firſt Exception—He held the Order to be well enough; and that the Appellation was common, both in Orders and in Acts of Parliament.

As to the ſecond—He ſaid he ſhould not have thought this a compleat State of the Caſe, if it had been ſtated on the Order of Seſſions for the Opinion of the Court on a *ſpecial* State of the Caſe. But as this is only a Circumſtance mentioned in the original Order, and is an *unneceſſary hiſtorical Declaration* of the Man's living there for a Year; it does not import or infer that they had *no other* Evidence, or that this is the *whole* State of the Caſe. The Words are —" It appears that the Place of his laſt legal Settlement *was at* " *Madley*; *where he lived as a hired Servant one whole Year*: We " do *therefore* adjudge, *&c.*"

THE THREE OTHER JUDGES concurring—

Per Cur. unanimouſly—

Both Orders were affirmed *as to the Man and his Wife*; *but* quaſhed *as to the* Daughter.

Rex *v.* Inhabitants of Atherton. No. 71.

Thurſday 10th *Feb.* 1742.

Conditional Hiring, with *Service*, for a *Year*, will gain a Settlement.

ON *Saturday* laſt a Motion was made by Mr. *Bootle*, to quaſh an Order of Seſſions confirming an Order of two Juſtices for the Removal of *Ralph Harriſon* and *Martha* his Wife and *John* their Child from the Townſhip of *Barton* in *Lancaſhire*, to *Atherton*, in the Pariſh of *Leigh*, in the ſame County.

CASE—*Ralph Harriſon*, being unmarried, and not having any Child or Children, and being legally ſettled in *Atherton*, was in the Year 1729, hired by *Thomas Barlow*, an Inhabitant of and le-

ATHERTON and BARTON.

gally ſettled in *Barton*, FOR ONE YEAR, at 4 *l.* Wages payable quarterly: And it was agreed between the ſaid *Barlow* and *Harriſon*, at the *Time* of the ſaid Hiring, "that *either the ſaid Maſter or Ser-* "*vant ſhould be* LOOSE FROM OR AT LIBERTY TO DETERMINE "THE SAID CONTRACT or Hiring AT THE END OF ANY QUAR- "TER of the ſaid Year; *Either* of them giving *a Month's Notice* "to the other." But it appears that NO *Notice* of diſſolving or determining the ſaid Hiring or Service was *ever* given by either the ſaid Maſter or Servant; and that the ſaid *Ralph Harriſon continued in his Maſter's Service in Barton*, aforeſaid, the *whole* Year. It alſo appeared, that the ſaid *Ralph Harriſon*, at the *Time* of the ſaid Hiring, *declared that the* REASON *of the ſaid Hiring being made determinable* at the End of any Quarter upon ſuch Notice as aforeſaid, *was* "*that he* WOULD NOT *be hired* SO AS TO LOSE *his former Set-* "*tlement.*"

On ſhewing Cauſe, now, againſt quaſhing the Orders, it was ſaid, by Sir *John Strange*, that it is eſſentially neceſſary that there be an *abſolute Hiring for a Year*. The Reaſon of it is, that it ſhould appear that the Perſon came fairly into the Pariſh to get his Livelihood there, and to do real Service, and not merely to gain a Settlement. But this Contract was determinable, by either Party, at the End of every Quarter: And the *Intention* of the Parties is *moſt expreſsly ſpecified*, in the preſent Caſe, to be "that the Man was *not* "to loſe his former Settlement."

This Caſe differs from the Caſe of *Rex* v. *The Inhabitants of Stroude* *, *Tr.* 7 *G.* 2. *B. R.* For there the Contract was originally for a Quarter of *a Year*, but the Maid was to continue for a Year *if her Maſter and ſhe liked one another*: And the *general* Caſe of hiring Servants is *much like that*. But here are *expreſs negative* Words: And a particular Time is *fixed* for the *Determination* of the Contract.

* *V.* No. 1. p. 1. *Rex* v. *Inhabitants of Lidney.*

On the contrary it was ſaid, that there appears upon the Face of this Order, a Deſign to *evade the Law*. In the Caſe of *Lidney* and *Stroude*, the original Hiring was but for a Quarter of a Year: This is for a *whole* Year. And in the Caſe of *Rex* v. *The Inhabitants of New Windſor*, *H.* 8 *G.* 2. *B. R.* † Colonel *Meyrick* hired the Servant for a Month upon Liking; and ſhe was to go away on a Month's Wages or a Month's Warning: But as ſhe was to have 5 *l.* a Year Wages, and continued above a Year, it was holden to gain a Settlement ‖.

† *V. Ante*, No. 7. pa. 19.

‖ *V. Ante*, pa. 20, 21, 22.

Lord Chief Juſtice LEE held it to be a good Settlement at *Barton*, upon the Authority of the Caſes cited. And he obſerved that

ATHERTON and BARTON.

that the *Words* of the Acts * of Parliament are complied with: For here is both a *Hiring for a Year*, and a *Service for a Year*.

The two Reaſons that ſeem to be the Foundation for gaining a Settlement of this Kind are the *Credit given* to the Servant, and the *Service done* by him. This conditional Agreement is inſerted into the Contract purely *to avoid* the Settlement. It don't ſeem to have been *intended* to be put in Execution: It is plain, at leaſt, that it *never was* executed.

* *V.* 3 & 4 *W.* & *M. c.* 11. *ſect.* 7. and 8 & 9 *W.* 3. *c.* 30. *ſect.* 4.

It appears, in the Event, moſt clearly, that this Liberty of putting an End to the Service within the Year was never taken: The Service did in Fact *continue during the whole* Year. And the Hiring is expreſsly ſtated to have been "*for one Year*." It is therefore ſtronger than the Caſe of *Lidney* and *Stroude*, or than that of *New Windſor*. For, in the former, the firſt Hiring was but for a Quarter of a Year; and in the *New Windſor* Caſe, the firſt Hiring was but for a *Month*: But in both, it was, collectively, upon the whole Circumſtances, taken to *amount to* a Hiring for a Year. Yet they were, Both, to be *conditionally* void, as well as the preſent Hiring.

Therefore both Orders muſt be quaſhed.

Vide, Poſt. No. 101. S. P.

Mr. J. WRIGHT and *Mr. J.* DENISON concurring—

*Per Cur.** unanimouſly—

* Mr. Juſtice *Chapple* was abſent.

Both Orders QUASHED.

Eaſter Term

16 Geo. 2. 1743.

Rex *v.* Inhabitants of Stansfield.

No. 72.

Monday 16th *May* 1743.

TWO Juſtices remove *Jonathan Barrat*, *Mary* his Wife, *Elizabeth*, *John* and *Mary* their Children, from the Townſhip of *Stansfield* in the Pariſh of *Heptonſtall* in the Weſt Riding of *York-ſhire*,

A *Certificate*-man may gain a Settlement by PURCHASE, in the *certificated Pariſh*. And a PASS to a *different* Pariſh, *unappealed from*, is not concluſive. *V. Seſſ. Caſes*, Edit. 1750, vol. 1. No. 316. pa. 396. S. C.

STANSFIELD and SPOTLAND.

ſhire, to the Townſhip of *Spotland* in the Pariſh of *Rochdale* in the County Palatine of *Lancaſter*; which they adjudge to be the laſt Place of the lawful Settlement of the ſaid *Jonathan Barrat*. This original Order is dated 12th *April* 1742.

The *Pontefract* Seſſions held 27th *April* 15 *G.* 2. upon an Appeal by *Spotland*, order the ſaid Appeal to be *reſpited* to the next General Quarter-Seſſions of the Peace to be holden BY ADJOURNMENT *at* BRADFORD in and for the ſaid Riding; and that the Churchwardens and Overſeers of the Poor of *Stansfield* aforeſaid do, on Notice of this Order, *pay or cauſe to be paid* to the Churchwardens and Overſeers of the Poor of *Spotland* aforeſaid the Sum of four Guineas FOR COSTS *of the ſaid Appeal*.

And at the General Quarter-Seſſions of the Peace of the Lord the King holden at *Skipton*, in and for the ſaid Riding, on *Tueſday* the 13th Day of *July* 16 *G.* 2. before, *&c.* that ſame Seſſions of the Peace was adjourned, by the Juſtices laſt named and others their Fellows as aforeſaid, until *Thurſday* the 15th Day of the ſaid Month of *July* in the Year aforeſaid, at ten of the Clock in the Forenoon of the ſame Day, *to be holden at Bradford*, in and for the Riding aforeſaid, to do further as the Court there ſhall conſider, *&c.*

And on the ſaid *Thurſday* the 15th Day of *July* aforeſaid, the ſame General Quarter-Seſſions of the Peace WAS *holden* BY THE ADJOURNMENT *aforeſaid* AT BRADFORD *aforeſaid*, in and for the ſaid Riding, before, *&c.*

At which ſaid General Quarter-Seſſions of the Peace continued and holden by the Juſtices laſt named at *Bradford* aforeſaid, in and for the ſaid Riding, on the ſaid *Thurſday* the 15th Day of *July* aforeſaid in the Year aforeſaid, before the Juſtices laſt named as aforeſaid, it was ordered as follows, *to wit*——

Upon the further and full Hearing of the Appeal, *&c.* it appears to this Court, That *Jonathan Barrat*, the Party removed, being *an Inhabitant legally ſettled in Stansfield*, came into the Townſhip of *Spotland* in the Pariſh of *Rochdale* and County of *Lancaſter* BY VIRTUE OF A CERTIFICATE. That by Deed not indented, bearing Date the 4th Day of *February* 1728, made between *Richard Aſhworth* of *Tongue-End* in the Pariſh of *Rochdale* aforeſaid Yeoman of the one Part, and the ſaid *Jonathan Barrat* (by the Name and Addition of, *&c.*) on the other Part, the ſaid *R. A.* did demiſe ſet and to farm let unto the ſaid *J. B.* his Heirs, Executors, Adminiſtrators and Aſſigns 20 Square Yards of Land in *Whitworth* in the ſaid Pariſh, *To hold* to the ſaid *J. B.* his Executors, Adminiſtrators and Aſ-

ſigns

ſigns for the Term of 999 Years, under the reſerved Rent of 1*s.* a Year. By Virtue whereof, the ſaid *J. B.* entered to the ſaid Premiſſes, and afterwards *erected a Houſe and other Out-buildings* upon the ſame; and by Indenture bearing Date the 9th Day of *July* 1730, made between the ſaid *Jonathan Barrat* of the one Part and *John Horſfall* of *Hoodley* in *Langfield* in the County of *York* Yeoman of the other Part, the ſaid *Jonathan Barrat*, in Conſideration of 16*l.* 10*s.* paid to him by the ſaid *John Horſfall*, bargained ſold ſet over and aſſigned the ſaid Premiſſes with the Buildings thereupon erected, unto ſaid *J. H.* his Heirs, Executors, Adminiſtrators and Aſſigns, during the Reſidue of the ſaid Term of 999 Years; to hold to the ſaid *J. H.* his Heirs and Aſſigns: By Virtue of which ſaid Aſſignment, he the ſaid *J. H.* entered to the ſaid Premiſſes. And afterwards, by Indenture bearing Date the 16th Day of *September* 1731, made between the ſaid *Richard Aſhworth*, of the one Part and the ſaid *J. H.* of the other Part, the ſaid *R. A.* leaſed ſet and to farm let to the ſaid *J. H.* his Heirs Executors Adminiſtrators and Aſſigns the ſaid 20 ſquare Yards of Land before granted by him to the ſaid *J. B.* and alſo, *&c.* and alſo *&c*; To hold to the ſaid *J. H.* his Heirs Executors Adminiſtrators and Aſſigns for the Term of 999 Years: By Virtue of which Grant, the ſaid *John Horſfall* entered to the ſaid Premiſſes. That afterwards, an Uncle of the ſaid *Jonathan Barrat* having died, and left ſome Money to the ſaid *J. B.* he thereupon applied himſelf to the ſaid *J. Horſfall* in order to *purchaſe* the ſaid Premiſſes by him the ſaid *Jonathan Barrat* before ſold to the ſaid *John Horſfall*, and *alſo* the ſaid Premiſſes granted by the ſaid *Richard Aſhworth* by the Deeds laſt above-mentioned. Upon which, the ſaid *J. H.* and he came to an Agreement; and by Indenture bearing Date the 9th Day of *July* 1736, made between the ſaid *J. H.* of the one Part and the ſaid *J. B.* of the other Part (reciting all the Deeds before mentioned) the ſaid *J. Horſfall* IN CONSIDERATION OF FORTY-SEVEN POUNDS *bonâ fide* paid to him by the ſaid *Jonathan Barrat*, *bargained ſold aſſigned and ſet over unto the ſaid Jonathan Barrat* his Heirs and Aſſigns all and ſingular the before-mentioned Premiſſes, to hold unto the ſaid *J. B.* his Heirs Executors Adminiſtrators and Aſſigns during the Reſidue of the ſaid ſeveral Terms of 999 Years then to come.

That the ſaid Premiſſes all lie in the ſaid Townſhip of *Spotland*; *and at that Time were worth the ſaid Sum of Forty-ſeven Pounds*, and *now are worth the Sum of ſixty-three Pounds to be ſold.*

By

STANSFIELD *and* SPOTLAND.

By Virtue of which Grant, the ſaid *J. B.* entered into the ſaid Premiſſes, and *inhabited upon the ſame for two or three Years* then next following.

That by Indenture bearing Date the 23d Day of *May* 1738, the ſaid *J. B. aſſigned over* the ſaid Premiſſes to the above-named *J. H.* by Way of *Mortgage*, for the Sum of 45*l.*

That afterwards, the ſaid *J. B.* was apprehended at *Mancheſter* in the County Palatine of *Lancaſter*, *as a* VAGRANT; and was ſent from thence, with his Family *by a* PASS * bearing Date the 3d Day of *April* 1742 (a Copy whereof is hereunto annexed) TO *Stansfield* in the County of *York*: To which PASS, NO APPEAL † was made at the *then next* General Quarter-Seſſions of the Peace for the ſaid County of *Lancaſter*; but that the ſame *Paſs* was *duly* ‖ *recorded* there.

* *V.* 13 *G.* 2. *c.* 24. *ſect.* 7.

† *V. Sect.* 29.

‖ *V. Sect.* 7.

That *after he was ſo ſent by the ſaid Paſs* as aforeſaid, *and before the Quarter-Seſſions next ſucceeding* the Date of the ſaid Paſs, the ſaid *J. B.* being poor and likely to become chargeable to the ſaid Townſhip of *Stansfield*, was *removed from Stansfield aforeſaid to the Town of Spotland* aforeſaid, *by Virtue of the Order now in Queſtion* between the ſaid Parties.

Upon Conſideration WHEREOF, this Court [the Seſſions holden by Adjournment at *Bradford* on 15th *July*] is of Opinion "That "the laſt legal Settlement of the ſaid *Jonathan Barrat* is in *Stans-* "*field* aforeſaid;" and doth therefore order the ſaid Order of Removal to be diſcharged.

On *Saturday* 13th *November* 1742, Mr. *Fawkes* moved to quaſh theſe Orders of Seſſions; and obtained a Rule to ſhew Cauſe why they ſhould not be quaſhed.

His Exceptions to the Order of Seſſions made at *Pontefract*, on 27th *April*, were—1ſt, That the *Appeal* being given to the *next* Quarter Seſſions (by 13 & 14 *C.* 2. *c.* 12. *ſect.* 2.) they ought to have entered into the Merits of it themſelves; and had *no Power* to *adjourn* it at all. 2dly, That, at leaſt, they ſhould have adjourned it to the next *orginal* Quarter-Seſſions; but certainly could not adjourn it to a Quarter-Seſſions to be holden *by Adjournment*. 3dly, That they had *no Power* to give *Coſts* of the Appeal, *without hearing it*: The Coſts of an Appeal muſt depend upon the Determination of the *Merits* of it. [*V.* 8 & 9 *W.* 3. *c.* 30. *ſect.* 3.]

His 4th Exception was to the laſt Order of Seſſions, made at *Bradford* on the 15th of *July*; and went directly to the Merits; *viz.*

"That

"That their Opinion and Determination were *wrong*; for that *Jo-*
"*nathan Barret* had, by his Purchaſe and Reſidence upon it in
"*Spotland, avoided his Certificate*, and *gained a Settlement there.*"

On *Friday* 4th *Feb.* laſt, Mr. *Fawkes* moved to make his Rule abſolute for quaſhing theſe Orders of Seſſions; and was ſupported by Sir *John Strange*.

Mr. *Gundry*, on Behalf of the Townſhip of *Spotland*, argued in Defence of them; and inſiſted on two Points; namely, the Merits, or true Place of Settlement; and the *not having appealed* from the *Paſs*.

1ſt, The *Purchaſe did not* gain a Settlement for this *Certificate-man*. For by 9 & 10 *W.* 3. *c.* 11. no Perſon can gain a Settlement *by any Act* WHATSOEVER, but by renting 10 *l.* a Year, or by executing ſome annual Office in the Pariſh.

Now, *voluntary* PURCHASING *of a Leaſehold Eſtate* of 999 Years Duration, for 47 *l.* is not within Either of theſe Exceptions. It is manifeſtly not within the latter: And it can't be included in the Expreſſion "*taking a Leaſe* of a Tenement."

2dly, The Juſtices could not make this Order of Removal *during* the Time for appealing from the Paſs. If the Settlement of this Man was not in *Stansfield*, they ſhould have APPEALED *from the Paſs*; and not have ſent them by an *original Order*, when the Paſs *remained unappealed from*. He alſo obſerved and objected, that in this *original* Order, neither the *Ages of the Children* are ſet forth; nor is there *any Adjudication* with reſpect to *their* Settlement. [*V. ante*, No. 26. 29. 45. 57. 63.]

Lord Chief Juſtice LEE ſaid he did not well ſee what the Court was to do upon this Caſe. For, the Order of Seſſions ſtates the Merits, and ſtates the Paſs unappealed from, and their Opinion "that the Man's Settlement was at *Stansfield*," and then concludes to quaſh the Order of the two Juſtices; but does not ſpecify *for what Reaſon*, they are of Opinion "that his Settlement was at *Stanſ-*
"*field:*" It does not appear whether they founded their Opinion upon the *Right of Settlement*, or upon the *not appealing from the Paſs*.

As to the *Purchaſe*—I do not know that 9 & 10 *W.* 3. has been taken ſo ſtrictly as Mr. *Gundry* would ſuppoſe. A *Deſcent* or a *Deviſe*, and I believe a *Purchaſe* too, have been determined to gain a Settlement, (after forty Days Reſidence,) upon the Foot of the Perſon's *not being removable from his* OWN, and as not being an *Intruder* within the Meaning of 13 & 14 *C.* 2. *c.* 12. So that whenever a Man has an *Intereſt of his own, though under* 10 *l. a Year*, he ſhall

STANSFIELD *and* SPOTLAND.

not be removable by *that* Statute. The preſent Queſtion turns indeed upon the Conſtruction of the *Certificate*-act.*

*9 & 10 W. 3. c. 11.

Now though this Perſon was a *Certificate*-man, yet if he had come to this *by Act of Law*, it would have gained him a Settlement: And I believe it has been ſo determined in Caſe of *Purchaſes* too. I think, the ſame Conſtruction has been made upon *this* Act, as upon that of 13 & 14 *C.* 2.

As to the *Coſts*—The Order of Seſſions made at *Pontefract* is wrong, as to *that* Part of it, certainly.

Mr. Juſtice WRIGHT and *Mr. Juſtice* DENISON concurred. They thought it had been determined "that a *Certificate-man may* "gain a Settlement *by Purchaſe*," in *P.* 5 *G.* 1. *B. R. Rex.* v. *The Inhabitants of* * *Burcleer*. They thought the *Pontefract*-order well enough as to the *Adjournment*; but bad, as to the Coſts. Mr. Juſtice *Deniſon* ſaid, The Places of holding adjourned Seſſions were very well known in *Yorkſhire*.

* *V. Caſes of Settlement*, pa. 90. Caſe 121.

LEE *Chief Juſtice*.—Before 9 *G.* 1. *c.* 7. † every Body that came into a Pariſh and made *any* Purchaſe *whatſoever*, was irremovable.

† *V. Sect.* 5.

We ſeem to think the *Seſſions wrong*, and the *two Juſtices right*, as to the MERITS. And if ſo, then it will ſtand upon the Queſtion about the *Validity* of the Order of two Juſtices made *during the Time* the *Paſs remained unappealed from*, and before the Quarter-Seſſions next after its Date.

Per Cur.—

The original *Order of* two Juſtices *was* quaſhed as to the CHILDREN. [*V. ante*, No. 26. 29. 45. 57. 63. 70.]

And the Order of the Pontefract-Seſſions was quaſhed, as to the COSTS.

Order of Juſtices quaſhed as to the CHILDREN, for not ſetting forth their Ages, or adjudging their Settlement: and Order of Seſſions quaſhed as to the COSTS, given upon a mere *Adjournment* of the Appeal.

As to the Reſt—It was ordered to ſtand over, for the Opinion of the Court. And

Lord Chief Juſtice LEE now delivered their Opinion, as follows.

This Caſe ſtands for our Opinion on the MERITS *only*; which conſiſt of two Parts, *viz.* 1ſt, The *Right of the Settlement*, and 2dly, The *Concluſiveneſs of the Paſs remaining unappealed from*.

Now, as to the *Right of the Settlement*—We before declared that a *Certificate*-man *does* gain a Settlement by becoming *irremovable*, and

and ſo continuing for forty Days: And ſo was the Caſe of *Rex* v. *The Inhabitants of Burcleer*, *P.* 5 *G.* 1. *B. R.* [See that Caſe, in Sir *John Strange* 163, 164.] STANSFIELD *and* SPOTLAND.

2dly, As to the *Paſs**—Upon looking into the Orders, I do not ſee that the Queſtion does neceſſarily and properly *ariſe*. It is not a Paſs whereby the Man was ſent to *Stansfield* As *the Place of his laſt legal Settlement*; but only, *generally*, to ſend him *thither*. Indeed the Order of Seſſions *refers* to a *Copy* of a Paſs, to the Order annexed: By which *Copy* indeed, (when it comes to be looked into) it *does* appear "that he was ſent to *Stansfield* As *the Place of his laſt le-* "*gal Settlement*." But the *Bradford* Juſtices do not *adjudge* "that "*Stansfield* was *really ſo*:" And we cannot take Notice of this *Copy* of a Paſs annexed to the Order; which is no Part of the *Record*. Therefore, I ſay, the Queſtion does *not ſeem quite properly to ariſe*, "Whether a *Paſs* † unappealed from, is to have the ſame Effect "as an *Order* of *two*‡ Juſtices unappealed from."

† *V.* 17 *G.* 2. *c.* 5. *ſ.* 7. for the Nature and Form of a *modern* Paſs.

‡ *One* Juſtice only is ſufficient to ſign a Paſs.

§ *V. Ante*, pa. 192.

We have, however, conſidered that Queſtion, "Whether by the "late Act of 13 *G.* 2. *c.* 24. a *Paſs* unappealed from be *as* § *conclu-* "*ſive* as an *Order of two Juſtices* unappealed from." And we are of Opinion "that this Act of Parliament is *not* to receive ſuch Con- "ſtruction, or be conſidered in ſuch a Manner, as to put a Paſs "*upon the Foot* of an *Order of two Juſtices* in this Reſpect."

In Caſe of an *Order of two* Juſtices, *two other* Juſtices can not make a different Order; becauſe the Authority of each two would be equal; and therefore it would be *a* claſhing of the *ſame* Authority.

But that does *not* ſeem to be the preſent Caſe at all.

This Act of Parliament of 13 *G.* 2. was made only in Order to *ſecure Vagabonds*, and to ſend them to their former Places of Settlement or Birth, *if* to be found; if not, then to the Place from whence they came: ‖ And it operates upon ſuch as are *actually Vagabonds*. But the Act of 13 & 14 *C.* 2. *c.* 12. was made with a

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* *Memorandum*,

The *Arguments* upon the Concluſiveneſs of a Paſs are pretty fully ſtated in No. 74, and are worth peruſing, *before* the preſent Reſolution is read; becauſe they lead regularly to it. They were *prior* in Time to the preſent Reſolution; though the RESOLUTION of that Caſe (of *Upmerden*) happened to be *poſterior* to this of *Stansfield*.

‖ If their laſt Settlement appears, then they are to be ſent thither: If it does not, then to the Place of Birth; or Father's or Mother's Abode, or to the Place where laſt found; according to the Directions of the Act. [*V. ſ.* 7.]

STANSFIELD and SPOTLAND.

View to *prevent* Vagabonds: And therefore it gave Power to FIX them in their laſt legal Place of Settlement.

But the Authorities given by theſe two Acts are very different. On that Act of 13 & 14 *C.* 2. *c.* 12. though *Complaint* may be made to *one* Juſtice; yet *one* Juſtice can not *act*, ſingly: Here *one ſingle* Juſtice may act. So there is a Difference too as to the *Manner* of ſending them. Upon *that* Act, the Removal is to be at the Expence of the *Pariſh:* Here, of the *County*.

Another Thing that makes one believe the Parliament *did not intend* to put this Paſs warrant ſigned by a *ſingle* Juſtice, upon the Foot of an *Order* made by *two* Juſtices, is, that though the *Reaſon would be the ſame*, yet the *ſame Care* is *not* taken as to the Proviſion on Appeal: For upon an Appeal from an *Order* of two Juſtices, there is a Proviſion for *Coſts*; but *none*, on *this* Act. Here are * *no Coſts* given on Appeal: Yet that Proviſion would be juſt *as reaſonable* as in the Caſe of an Order of two Juſtices, *if it had been intended* to be put upon the ſame Foot in all other Reſpects: But upon Appeals from Orders of two Juſtices, Coſts *are* ‖ payable. Now it would be ſomething extraordinary, and cannot well be conceived to have been the Senſe of the Legiſlature, that a Perſon's being ſent by *one* Juſtice of Peace ſhall have the *ſame Effect* as if ſent by *two*, and yet that there ſhould *not be the ſame Remedy* upon an *Appeal*.

* *V. ſ.* 29.

‖ Not by 13 & 14 *C.* 2: But by ſubſequent Statutes. *V.* 8 & 9 *W.* 3. *c.* 30. *ſ.* 3.

Therefore we are of Opinion that this Act made in Relation to Vagrants and the Manner of paſſing them, was in a *different* View from that which was calculated for the FIXING *of Settlements:* And that this Act is only calculated to convey them to their Settlement, if it can be found; or (in Caſes where their Settlement is not found) only to remove them to the Place of their Birth, or the Abode of their Parents, or where laſt found begging, *&c.* there to be provided for according to Law: And that Proviſion is, "to keep them "*till* their laſt legal Settlement can be diſcovered, but *no longer*;" and *then* they will be ſubject to a Removal (by Virtue of the former Act) to their Place of laſt legal Settlement; on which Removal an *Appeal* will lie, *ſubject to Coſts*.

And we hold that the Settlement at preſent in Queſtion is at *Spotland*, where the Certificate-man made his Purchaſe.

Therefore the Order of Seſſions muſt be quaſhed.

ORDER *of* SESSIONS (*made for diſcharging the original Order*) quaſhed; ORIGINAL ORDER *affirmed*.

V. Poſt. No. 74. as to a Paſs unappealed from not preventing an Order of Removal, and ſee the *Note* at the End of that Caſe. Alſo ſee *Poſt.* No. 75. as to a *Certificate-perſon*'s gaining a Settlement by a *Purchaſe*.

Rex

Rex *v.* Inhabitants of Normanton. No. 73.

Monday 16th *May* 1743.

Order for the Removal of a *Wife* and her *Children* to the Place of the *Huſband*'s Settlement, quaſhed as to the *Children*; 1ſt. for not ſtating them to be the *Children* of the *Huſband*: and 2dly. for not ſetting out their Ages, or adjudging their Settlement.

* As to this Exception, *Vide Ante*, No. 26. 29. 45. 57. 63. 70. 72.

TWO Juſtices made an Order for the Removal of *Elizabeth* the Wife of *Job Smith*, *John*, *Ann*, *Thomas* and *Mary* her Children from *Repton* in *Derbyſhire* to *Normanton* in *Leiceſterſhire*, as the laſt legal Place of Settlement of *Job Smith*: And the Seſſions confirmed that Order, generally.

On *Friday* the 11th of *February* laſt, a Motion was made, by Mr. *Eardley Wilmot*, to quaſh theſe Orders: And the following Exceptions were taken by him.

1ſt, The Children do not appear, by this Order, to be the Children of *Job Smith*, but only the Children of *Elizabeth Smith*: The Words are—" *her Children.*"

2dly, Their *Ages are not ſet out*; nor any *Adjudication* of *their* Settlement.*

3dly, A married Woman can not be removed to any Place but the Settlement of her *Huſband*: otherwiſe, it would amount to a Divorce. But it does not here appear that the *Job Smith*, whoſe Settlement is adjudged to be in *Normanton*, is the *ſame Job Smith* who is *Huſband* to *Elizabeth*; it not being ſaid " *the ſaid Job*," but only *Job Smith*, *generally*.

Mr. *Lloyd*, who now ſhewed Cauſe, allowed the Uncertainty *whoſe* Children they were; *i. e.* who was the *Father* of them: But propoſed to ſend it back again to be clearly ſtated. As to the 3d Exception—he ſaid, That as *only one Job Smith* was mentioned, the Court would underſtand it to mean the *ſame Job Smith*.

THE COURT anſwered, That it could not be ſent back; for it was not a ſpecial Order, but a general one: But as to the 3d Exception—they declared they would *intend* him to be the *ſame Job Smith*. Therefore

Per Cur.—(Mr. Juſtice *Wright* and Mr. Juſtice *Deniſon*, the only Judges then in Court,)—

The Orders muſt be quaſhed as to the four Children; *and affirmed as to the* Woman.

Rex

No. 74. Rex *v.* Inhabitants of Upmerden.

The ſame 16th *May* 1743.

A Pass *unappealed from* is not concluſive, in like manner as an *Order* of two Juſtices.

ON *Friday* 5th *Feb.* 1741, a Motion was made, by Mr. *Staniford*, to quaſh an Order of Seſſions confirming an Order of two Juſtices for the Removal of *Abigail Boyat*, and *George*, *William* and *John* her Children (aged, *&c.*) from *Illsfield* to *Upmerden*, (both in *Suſſex*.)

THE CASE, on the Order of Seſſions appears to be (in ſhort) this—That *Abigail Boyat*, *George*, *William* and *John* her Children were *laſt legally ſettled* at *Upmerden*: But that they were found *wandering and begging*, and were apprehended in *St. Andrew's Chicheſter*; and were carried before the *Mayor*, who, in Purſuance of the Statute of * 13 *G.* 2. *c.* 24. made a *Paſs* under *his* Hand and Seal (which is ſet out *verbatim*.)

* *V. Ante*, No. 72.

This *Paſs* is dated 16th *April*, 1741; and calls her "*Abigail Wife* "*of Thomas Ballden*," with her three Children, *George* aged about eight Years, *William* about ſix, and *John* about two; and ſtates it to appear upon *Examination* of her and others, "that the Place of "the laſt legal Settlement of the ſaid *Thomas Ballden her Huſband* "is in *Illsfield*; and that they are Rogues and Vagabonds within the "Act;" Therefore the Paſs orders them to be conveyed to *Illsfield*.

Then there is returned, from the Quarter-Seſſions of *Chicheſter*, a Regiſter and Record of the Examinations of Rogues and Vagabonds; and alſo of the Duplicates of the Paſſes ſigned by the Juſtices and tranſmitted by them to the next General Quarter-Seſſions.

Note—This Quarter-Seſſions appears to have been holden on 16th *July* 1741: And the Original Order of Removal now in Queſtion was made 18th *July* 1741.

‖ *V. Ante*, No. 72. S. P.

It is alſo ſtated, That by Virtue of this Paſs, the ſaid *Abigail Boyat* and her ſaid three Children, *George*, *William* and *John*, were *carried to Illsfield*, and received and kept there till 25th *July* laſt; and that the Pariſh of *Illsfield* did ‖ NOT APPEAL *to the Seſſions of the County*, *or* OTHERWISE REVERSE *the ſaid Paſs*: And that after ſuch Paſs, neither the ſaid *Abigail*, *George*, *William* or *John* gained any new Settlement.

Mr. *Staniford* alledged that the PASS, *unappealed from*, was *concluſive* upon the Pariſh of *Illsfield*.

A Rule was made upon the ſaid 5th of *February* 1741, to ſhew Cauſe. UPMERDEN *and* ILLSFIELD.

Upon ſhewing Cauſe, on *Wedneſday* 7th of *July* 1742, it was ordered to ſtand over.

On *Thurſday* the * 25th of *November* laſt, it was argued by Mr. *Staniford* and Mr. *Lloyd*, for *Upmerden*, againſt the Orders; and by Mr. *Gundry* and Mr. *Henley*, for *Illsfield*, in Support of the Orders.

The Objections made to the Orders were (1ſt,) to the Order of Seſſions, That the *Paſs unappealed from* was *as concluſive* as an Order § of two Juſtices unappealed from: And (2dly,) to the original Order; becauſe of the Adjudication of the laſt legal Settlement is in the *preterperfect Tenſe*.

§ *V. Ante*, pa. 192. and *Salk.* 489. *inter* Inhab. of *Thacham* and *Findon*.

Mr. *Gundry contra*, anſwered the 2d Objection—That it was in the Words of the Act of 13 & 14 *C.* 2. *c.* 12. and ſaid this Objection had been conſtantly over-ruled ‖: And he particularly cited a Caſe in *Tr.* 7 *G.* 1. between *Wenſton* and *Kendon* Pariſhes, where this Exception was taken and over-ruled.

‖ *V. Ante*, No. 69. pa. 209. *Rex* v. *Inhabitants of Holbeck*.

Then he objected to the Paſs—That it *did not appear* that the Perſon who made it was *a Juſtice of Peace*: He is only ſaid to be "*Mayor of Chicheſter*." And if he was not a Juſtice of Peace, he has no Juriſdiction: For the Juriſdiction is given only to a Juſtice of Peace. And the Court will *not preſume* a Juriſdiction: They will *not preſume* that the Mayor of *Chicheſter* is a Juſtice of Peace.

But ſuppoſing him to be a Juſtice of Peace—a PASS does *not conclude* two Juſtices from making an *Order of Removal*. For 1ſt, this Act of 13 *G.* 2. was *not* made with the *ſame View* as the Act of 13 & 14 *C.* 2. which authorizes Orders of Removal; which are conſidered as Judgments. Under *that* Act, the *two* Juſtices muſt *adjudge* the Place of Settlement: But the Act of 13 *G.* 2. *c.* 24. does not at all ſeem to have been intended to be *final*; nor is any *Adjudication* required by it. *Removals* by two Juſtices under 13 & 14 *C.* 2. muſt be *upon Complaint of the Pariſh-officers*: But a *Paſs* may be made on *any one's* Oath. Suppoſe a Perſon ſhould be paſſed from *Scotland*—Where muſt they appeal? There are no Appeals to *Scotland*. And to whom ſhould they give Notice? for *no one* appears, on the *Paſs*, to have *complained*. Nor are any *Coſts of Appeal* provided for. There

* Obſerve that all theſe Arguments were *prior* in Time, to the *Determination* of the like Point in the *Staniſield* Caſe, No. 72.

are

UPMERDEN *and* ILLSFIELD.

are no Words in this Act of 13 *G.* 2. that amount to a Repeal of the Statute of 13 & 14 *C.* 2. *c.* 12: But *both* may *ſtand together.*

Mr. *Henley* added to what Mr. *Gundry* had ſaid, as to the Paſs—That *this Paſs* was *different* from what the Act preſcribed, as it did not ſhew his Juriſdiction as *a Juſtice*; nor was *upon Examination on* OATH: It is only, "*upon Examination,*" (generally.)

If a Juſtice of Peace does not *ſhew* his Juriſdiction, his Act is *void.* In 5 *Mod.* 321. *The Inhabitants of Chidingfold* v. *The Inhabitants of Penſhurſt,* "*Quorum unus*" was omitted: And it was therefore held void. *Salk.* 473. S. C. *Holt* held ſo, even againſt ſome former Opinions, if not Reſolutions: "For, being a ſpecial Authority, it muſt appear to be purſued." 5 *Mod.* 322. between the Inhabitants of *Walton* and *Cheſterfield*—the original Order was—"Whereas Complaint hath been made *to Us:*" But they did not call themſelves Juſtices: And it was therefore quaſhed. *Carthew* 365. and 5 *Mod.* 149. *Rex* v. *The Inhabitants of Wootton Rivers.* The Juſtices have no power to remove without Complaint of the Churchwardens: And for Want of ſuch Complaint, the Order was held void, and quaſhed.

As to the *Paſs being concluſive, not being appealed from,* and *no ſubſequent Settlement* being gained.—He ſaid the Conſequence of holding a Paſs unappealed from to be concluſive, would be very conſiderable: Becauſe moſt Paupers would come under ſome of the Deſcriptions of Vagrants in the Act of Parliament; and then, the Method of a Paſs being leſs expenſive than that of an Order of Removal, the Juſtices would always *chooſe* to proceed by Way of Paſs, if it were to be equally effective; and the rather, becauſe there could be no Coſts on an Appeal from it, either for Charges of Suit, or for Maintenance. And indeed, *No*-body is *Party* to a Paſs; whereas the Churchwardens and Overſeers are Parties to an Order: And *if* a Paſs was to be conſidered as an *Order*, a Pariſh might be concluded by an Appeal, when they were *not at all Parties*; as, for Inſtance, if upon an Appeal from the Paſs, the Vagrant ſhould be ſent back again.

All the Statutes are conſiſtent: They operate on the ſame Subject, but *diverſo Intuitu*; and are ſimilar to the Juriſdiction that temporal and ſpiritual Courts ſometimes have; one, for Puniſhment of Crimes; the other, for Reformation of Manners.

The Act of 13 & 14 *C.* 2. *c.* 12. is differently worded from this of 13 *G.* 2.—The former, (in *ſect.* 2.) expreſsly calls it a *Judgment*; "Perſons aggrieved by ſuch *Judgment* of the Juſtices:" But the

the latter only ſays "that any Perſons aggrieved by any *Paſs or other* "*Act* of any Juſtice or Juſtices may appeal to the next General or "Quarter-Seſſions." *Sect.* 29. And this Act of 13 G. 2. does not repeal that of 13 & 14 *C.* 2. It particularly ſpecifies what Acts it intends to repeal.

The Method of removing Vagrants by a Paſs is *not* a *new* Thing: For it is given by 12 *Ann. ſtat.* 2. *chap.* 23. And yet there is no Inſtance of any Determination of ſuch a Kind as they would ſupport; namely, "that a *Paſs* unappealed from is as concluſive as an "Order of two Juſtices unappealed from."

Lee *Lord Chief Juſtice* obſerved, here, That by 12 *Ann. ſtat.* 2. *c.* 23. *ſect.* 4. *if* the Vagrant had obtained any legal Settlement, he ſhould be ſent to the Place of his laſt legal Settlement, "by *ſuch* Order and in *ſuch* Manner *as by the Laws of this Realm* "other Perſons likely to become chargeable to the Pariſh, are to be "ſent." Now *that* was by an Order of *two* Juſtices: And in *Sect.* 6. it is ſo ſpecified—"and be ſent by an Order of *two* Juſtices of the "Peace to the Place of ſuch his her or their laſt legal Settlement."

The Counſel againſt the Orders replied, As to the Exception taken to the *original* Order, That it may be true that *Upmerden was once* the Place of their laſt legal Settlement; and yet it might *not* be ſo at the *Time of making* the Order of Removal. The Act of 13 & 14 *C.* 2. *c.* 12. which was providing for a *future* Time, could expreſs it no otherwiſe than as it did. And they alledged that there was a Caſe in *Salkeld*, expreſsly contrary to that which Mr. *Gundry* had cited. [But *qu. where:* For I cannot find it.]

As to the Objection to the *Paſs*—The Mayor could not make the Paſs *in Purſuance of the Statute*, unleſs he *was* the Officer that the Statute required to make it; that is to ſay, a Juſtice of the Peace. And it appears by the Regiſter of Examinations returned from the Quarter-Seſſions, "that *John Dore*, Mayor, *was* a Juſtice of Peace." The Act requires ſuch Regiſter of Examinations and Duplicate of Paſſes to be kept at the Quarter-Seſſions: And therefore it is ſufficient if it appears by *that*, "that he was ſo."

Beſides, the *Paſs* is *not before the Court*. If they would have objected to it, they ſhould have *removed* it. But as it is, at furtheſt, *only* voidable, *not void*, it ſtands *good at preſent*.

However, they propoſed to *wave* the Objections to the *original* Order, if the Counſel on the other Side would *wave their's* to the *Paſs*; ſo that it might come on upon the *Merits*.

UPMERDEN and ILLSFIELD.

As to the MERITS—*Till* 13 & 14 *C.* 2. *None* could be removed *but as Vagrants*; (for Settlements had then no Exiſtence:) And *that* Act does *not* ſpeak of the Warrants of Removal as *Judgments*. Indeed it would have remained *as* a Judgment, *if* the Act had not given an *Appeal*; which is in the Nature of a *Defeaſance* to it: But ſtill the former Removal muſt remain in Force till another deſtroys it. Here, the Act of 13 *G.* 2. directs the Pauper to be ſent to the laſt Place of Settlement, *by Paſs:* And as the Pariſh are *obliged* to receive the Pauper, it was certainly a *Judgment:* And the Act giving an Appeal ſhews, that this *is* a *Judgment*. The Words of the Paſs are an *Adjudication:* "It *appears to Us.*" The only Difference between the two Acts is, that one provides for *one Sort* of Poor; and the other, for *another*. How then can the *Views be diſtinct*, when the *Ends* are the *ſame?* Is not the Juſtice to *judge* of the Settlement, before he can ſend the Pauper to it? But it is ſaid—"Suppoſe they came from *Scotland*"—Why then, the Act has *not provided* for that Caſe: And on the former Law, it was as difficult to ſend into *Scotland*, as it is on this.

As to the *Notice*—The laſt Act ſays the Appeal ſhall be "upon "*due* Notice:" Which muſt therefore be given to the *Pariſh-Officers*.

As to the *Coſts* of the Appeal not being provided for by *this* Act—They ſeem to have forgotten that neither are Coſts of the Appeal given by 13 & 14 *C.* 2. And this is no Repeal of that Law; becauſe it relates to a *different Sort* of Paupers; and does *not operate* on the *ſame* Subject.

Lord Chief Juſtice LEE—The *whole* Caſe appears now *upon the Order of Seſſions*, which *ſtates the Paſs* in the very Words and Figures of it.

Now taking the Paſs *as ſtated*, and taking it *as an Order*, (and ſo it muſt be taken,) I think the Objection to it material. And it is ſtronger here than in other Caſes; becauſe here the Act of Parliament directs the very *Form* of the Paſs—("before me a Juſtice of Peace;") and the Form directs an Examination *on Oath:* But *this* Paſs is not agreeable to the Form preſcribed by the Act of Parliament.

All the Caſes are "that the *Juriſdiction* of the Juſtice of Peace "muſt be *ſet forth upon the Order*;" as his being of the *Quorum*, the *Complaint*, and ſuch like.

But as *this* Paſs *appears* ONLY *upon the Order of Seſſions*, it is *not ſufficiently before us:* It ought to be *removed by Certiorari*. The being *regiſtered at the Seſſions* does not help it; becauſe the Juriſdiction of

of the Juſtice muſt appear *upon the Face* of his *Order:* Nor will that regiſtering at Seſſions help the Want of Examination *on Oath.* We ſhould have had the Paſs *before us:* We cannot quaſh it, unleſs it be removed hither.

The *main* Queſtion will require Conſideration. The Manner of *Removal to the laſt legal Settlement*, by a PASS, is *new*. And it is material, as to *Coſts*, "whether this *may* be done." It is not material, "whether the Coſts were given *by* 13 & 14 *C.* 2. or *by* a *ſubſequent* Act." Be that as it may, Coſts *are* given *on Orders of Removal*; but *not* on theſe *Paſſes*.

Theſe Paſſes were *not conſidered as Orders*, before this Act; nor were perhaps *removable by Certiorari:* But *now* they *are Orders* and *are removable*. The right Way would be, to have a *Certiorari to remove the Paſs:* For we cannot quaſh it, if it be not here. It is, at preſent, a ſubſiſting Paſs.

It will deſerve great Conſideration, before we eſtabliſh theſe Paſſes to be upon the ſame Foot as *Orders* of *two* Juſtices of Peace.

Mr. Juſtice CHAPPLE, WRIGHT, *and* DENISON all agreed the Paſs was *bad*; but that it could not be *quaſhed*, unleſs brought hither by *Certiorari*.

They did not however, after that Argument, enter into the Merits; but deferred doing ſo till the next Term.

And now, as they had this Morning determined the Point in the Caſe of *Rex* v. *The Inhabitants of Stansfield*,

MR. GUNDRY moved for the Opinion of the Court; though the Paſs is not yet before them: Which is not now material, as the Point is ſettled—"that it would *not* be concluſive."

Lord Chief Juſtice LEE—To be ſure, we can take no Notice of the Paſs, unleſs it appears to the Court. But if it did, yet it would not ſtand in the Way of our affirming the Orders: Becauſe the Paſs is *only* intended to *prevent the Vagrancy*; and the Place of laſt legal Settlement *remains to be determined* afterwards.

We muſt determine in *this* Caſe conſiſtently with our Determination in that of *Stansfield:* And conſequently theſe Orders muſt be affirmed.

Per Cur.——

BOTH ORDERS AFFIRMED.

N. B. The above Determination takes it for granted that a PASS may be *appealed from*; though the contrary is expreſsly determined, in the Caſe of *Rex* v. *Inhabitants of Ringwould*, *Poſt.* No. 263.

Trinity Term

16 & 17 Geo. 2. 1743.

No. 75. Rex *v.* Inhabitants of Deddington.

Tueſday 21ſt *June* 1743.

A *Certificate*-man may gain a Settlement by PURCHASE, for *himſelf* and his *Wife* and *Children*, in the *certificated* Pariſh.

TWO Juſtices made an Order for the Removal of *Edward Maynard*, *Elizabeth* his Wife, and *Edward*, *Thomas*, *John* and *Anne* their Children, from *Deddington* to *Duns Tew* in the County of *Oxford*: And the Seſſions, upon Appeal, quaſhed this Order.

Note—Both theſe Orders were quaſhed *by Conſent* on *Thurſday* 11th *Feb.* 1741: And the Order of Seſſions was ſent back to be explained, in Order that the Court might have the Merits before them.

V. Sir *John Strange* 1193, S. C.

The amended Order ſtates—That *Richard Maynard* (the *Father* of the ſaid *Edward* who was removed with his Wife and Family by the ſaid Order) about the Year 1719 had a Certificate from *Duns Tew* to *Deddington*, which acknowledged the ſaid *Richard Maynard* and *Anne* his Wife and *Edward* their Son to be Inhabitants legally ſettled in *Duns Tew* aforeſaid. And the ſaid *Richard* and *Anne* and *Edward* their Son lived in the ſaid Pariſh of *Deddington* many Years, under the ſaid Certificate. It likewiſe appeared that during the Time the ſaid *Richard Maynard* and *Anne* his Wife and *Edward* their Son lived in the Pariſh of *Deddington* aforeſaid under the ſaid Certificate, the ſaid *Richard purchaſed a Meſſuage or Dwelling-houſe* in the Pariſh of *Deddington* aforeſaid, which coſt him 42*l.* and *paid for the ſame* with his *own* Money; and after the ſaid Purchaſe, *dwelt in and inhabited* the ſaid Meſſuage, as his own, *for many Years*. And it further appeared that the ſaid *Edward Maynard* his *Son lived with* the ſaid *Richard Maynard*, *as Part of his Family*, in the ſaid purchaſed Meſſuage, for many Years as aforeſaid, and *never gained any Settlement of his own*. And it further appeared, that the ſaid *Richard Maynard ſold* the ſaid Meſſuage, five Years ago; and that *Edward* the *Son had no Intereſt therein*, but *became chargeable* to the ſaid Pa-

riſh

riſh of *Deddington*; and that *R. M.* the Father *is living*; but *has now no Houſe or Eſtate whatſoever in Deddington aforeſaid.* Whereupon they diſcharge the Order of the two Juſtices. DEDDINGTON *and* DUN's-TEW.

On *Friday* the 10th of this Month, Sir *John Strange* moved to quaſh this Order of Seſſions. His Objection was, "That a *Certificate*-man had been indeed adjudged lately * to be capable of "gaining a Settlement *for* HIMSELF, by making a *Purchaſe:*" But it is carrying it too far to ſay "that a Certificate-man's making a "Purchaſe in the Pariſh ſhall fix his MARRIED *Son and his Wife* "*and all their Children* there too."

* *V. Ante*, No. 72.

Upon ſhewing Cauſe now againſt quaſhing this Order of Seſſions, the Caſes of *Rex* v. *The Inhabitants of Stansfield*, in the laſt Term † and *Rex* v. *The Inhabitants of Burcleer* there cited, were inſiſted on; where it is ſettled "that a *Certificate*-perſon *may* gain a Settlement "by Deſcent Deviſe or *Purchaſe.*" And the *Son* gained a Settlement alſo, they ſaid, as being *Part of his Father's Family*, and having *never* gained any Settlement of his own. And they cited *Salk.* 427. *Hard's* Caſe; and 521. *Cumner* and *Milton*; and *Rex* v. *Inhabitants of St. Auſtin's, Briſtol, Trin.* 8 *W.* 3.

† No. 72.

Lord Ch. Juſt. LEE.—The preſent Caſe is no more than this.—A Certificate was given, many Years ago, to old *Richard* and his Wife and *Edward* their Son: afterwards *Edward* marries, and has Children. *Edward* and his Wife and Children are the preſent Paupers. Old *Richard* made the Purchaſe in *Deddington.*

Now the Act of 9 & 10 *W.* 3. *c.* 11. mentions the Doubts that had ariſen upon the former Act; and then declares "that no Settle-"ment ſhall be gained *by Certificate*-perſons, EXCEPT *by the two* "*Methods therein ſpecified.*"

But I think the Caſe of *Burcleer* ‖ and *Eaſt Woodhay* is an Authority in the preſent Caſe: That Order has now been read; and it appears "that a *Certificate-man's Wife's Father ſurrendered to her* a Copy-"hold of 20*s. per Annum:*" And this was held a Settlement, though it was, moſt plainly, *neither* of the *two Caſes* mentioned in the Act. I remember the Caſe—Lord Chief Juſtice *Pratt* held it more than equivalent to renting 10 *l.* a Year. Mr. Juſtice *Eyre* held, "that "the Conſtruction of this Act of 9 & 10 *W.* 3. ſhould be agree-"able to that of 13 & 14 *C.* 2. *c.* 12. upon which a Man was irre-

‖ *V. Caſes of Settlements*, pa. 90, Caſe 121. and Sir *J. S.* 163, 164, S. C. But Sir *J. S.* is under a Miſtake in ſtating it to have been a *Deſcent* to the Wife: It came to her by the *Surrender* of her Father.

"moveable:

DEDDINGTON *and* DUNS'-TEW.

" moveable from *any* Tenement of *his own*, though it ſhould be " *under* 10 *l. a Year.*" I do not ſee that the Pariſh will be ſafer as to the Notice ariſing from *renting* 10 *l.* a Year, than as to the Notice ariſing from a *Purchaſe:* There ſeems to be an equal Notoriety in both Caſes. IF this Act was to be taken ſo *ſtrictly* as has been contended for, a Certificate-man could never gain a Settlement, though he ſhould *purchaſe* 5000 *l. a Year.*

One of the other Judges in that Caſe of *Burcleer* obſerved indeed " that it was not *ſtrictly* to be conſidered as an *Act of the Party* him- " ſelf; as he came in by the *Surrender to his Wife.*" But *all* the Court held it *not* to be within the Prohibition of the Act of 9 & 10 *W.* 3. the Man being *irremovable* as long as he had any Thing of his *own*, though he ſhould become actually chargeable to the Pariſh.

And if this be ſo in the Caſe of the *old* Man *Richard Maynard*, then all his Rights will be communicated to thoſe that *derive from him:* For, after gaining a Settlement by the Purchaſe, the Man himſelf is to be conſidered as an Inhabitant of the Pariſh in which he has gained it, *in the ſame Manner* as if he had actually rented a Tenement of 10 *l.* a Year, or executed an annual Office: In which Caſes it muſt be agreed " that legitimate Children, who have *no* " *Settlement of their own*, muſt *derive from their* FATHER'S LAST " *legal Settlement:*" (For the Settlements which the Father might have *previous to the laſt* are *out of the Caſe*, as much as if there never had been any ſuch; they being extinguiſhed by his gaining a new one, and having no more Exiſtence.)

Therefore the Order of Seſſions is a right Order; and the Rule for quaſhing it muſt be diſcharged.

Mr. Juſtice WRIGHT and *Mr. Juſtice* DENISON concurred with the Chief Juſtice in Opinion, and expreſſed themſelves to the ſame Effect.

Sir *John Strange* obſerved, That it was ſtated " that the old " Man's Settlement in *Deddington* was *at an End:*" And therefore this might *alter* the Caſe. But

THE COURT ſaid, It did not; becauſe it did not appear that he had gained any *ſubſequent* Settlement. This was his *laſt* legal Settlement: And it may very well *remain* ſo, though he has no Eſtate there now.

Per Cur.—

Order of Seſſions AFFIRMED.

See Poſt. No. 110. *Rex* v. *Inhabitants of Weſt Shefford, Friday* 8th *November* 1751, *Mich.* 25 G. 2. See alſo *Poſt.* No. 143. 149. 244. *Dougl.* 738. *accord.*

Michaelmas Term

17 Geo. 2. 1743.

Rex *v.* Inhabitants of Wingham. No. 76.

Monday 14th *Nov.* 1743.

In order to avoid a *Certificate*, and gain a Settlement, by *Office*, the Party ſhould be *legally placed* therein; and *hearſay* Evidence of his *Election* merely, is not ſufficient.

V. Sir *John Strange* 1199, S. C.

TWO Juſtices made an Order for the Removal of *William Hunt*, (a Certificate-man actually become chargeable to the Pariſh of *Wingham*) together with *Elizabeth* his Wife and their five Children (born in *Wingham*) *viz. John* about fourteen, *George* about twelve, *William* about ſix, *Joſeph* about four and a Half, and *Elizabeth* about two and a Half Years old, from *Wingham* to *Sellindge* (both in *Kent:*) And the Seſſions, upon Appeal, quaſhed this Order of the two Juſtices.

Special Caſe ſtates—That *John Hunt*, the Father of the ſaid *W. Hunt* the Elder, being legally ſettled in *Sellindge*, in the Year 1704 removed with his Wife and Family into *Wingham*, and dwelt there under a *Certificate* directed to the Churchwardens and Overſeers of *Wingham* and duly ſigned and ſealed by the Churchwardens and Overſeers of *Sellindge* and duly atteſted by two credible Witneſſes and duly allowed and ſubſcribed by two Juſtices of the Peace of the ſaid County of *Kent*; and which Certificate, dated 2d *Oct.* 1704, and delivered by the ſaid *John Hunt* to the Churchwardens and Overſeers of *Wingham*, did own and acknowledge the ſaid *John Hunt* and his Wife to be Inhabitants of, and to be Perſons legally ſettled in the ſaid Pariſh of SELLINDGE. That during the Time the ſaid *John Hunt* and his ſaid Wife and Family dwelt in *Wingham under the ſaid Certificate*, the ſaid *William Hunt the Elder was born in Wingham*, and was there educated and brought up. That the ſaid *William Hunt* the Elder afterwards married the ſaid *Elizabeth* his Wife, and by her hath had the ſaid five Children, who were *born in the ſaid Pariſh of Wingham*. And that the ſaid *W. Hunt* the Elder hath lived in *Wingham* from the Time of his Birth to the Time of his ſaid Removal by Virtue of the ſaid Order; but hath NOT GAINED ANY

WINGHAM and SELLINDGE.

ANY SETTLEMENT *in his own Right in Wingham or elſewhere ſince his Birth.*—

And it further appearing unto this Court [of Quarter Seſſions] *upon the Evidence of the ſaid John Hunt*, that one Day, during his Abode in the ſaid Pariſh of *Wingham* under the ſaid Certificate, having been from Home, his Wife, upon his Return Home, TOLD HIM "*That a Perſon, whom the ſaid* John Hunt *of his own Know-*"*ledge knew to be Borſholder of the Burrough of* Wingham-ſtreet *in* "*the ſaid Pariſh of* Wingham, *had left a wooden Tally for him at* "*his Houſe*, AS A TOKEN *that he the ſaid* John Hunt *had been* "CHOSEN *at the Court-Leet held for the Manor of* Wingham, *Borſ-*"*holder for the ſaid Burrough of* Wingham-ſtreet," *(within which Manor the ſaid Borough of* Wingham-ſtreet *lies*;) and that his Wife told him further, "That ſhe had burnt the ſaid Tally, before his "Return Home;" but the ſaid *John Hunt* was not preſent at the ſaid Court-Leet; nor did he the ſaid *J. H. know of his own Knowledge*, that he the ſaid *J. H.* was choſen Borſholder at the ſaid Court-Leet for the ſaid Burrough; neither was the Record or Preſentment of the Jury of the Leet, *or any other* EVIDENCE *of the Appointment or Election* of the ſaid *J. H.* to the ſaid Office of Borſholder, beſides what the Wife of the ſaid *J. H.* TOLD HIM the ſaid *J. H.* as aforeſaid, *given or offered in Evidence to this Court* upon hearing the ſaid Appeal—

And it appearing likewiſe to this Court, That he the ſaid *John Hunt* NEVER TOOK THE OATH OF OFFICE of a Borſholder for the ſaid Burrough; and that he the ſaid *J. H.* was NEVER SWORN into the ſaid Office of Borſholder; but that within the Year after his ſaid Wife told him the ſaid Tally had been left at his Houſe as aforeſaid, he the ſaid *John Hunt* DID EXECUTE ONE WARRANT of a Juſtice of the Peace for the ſaid County, *directed to the Borſholder* of the ſaid Burrough; and for the Space of a Year next after his ſaid Wife told him the ſaid Tally had been left at his Houſe as aforeſaid, the ſaid *J. H. was willing and ready to execute* the ſaid Office; and during the ſame Year, the ſaid *John Hunt had a Houſe* in the ſaid Pariſh of *Wingham*, where his Family dwelt; but he himſelf (being by Trade a Carpenter) went to work at his Trade, during Part of the ſaid Year, in *Ramſgate*, a Place about twelve Miles diſtant from *Wingham* and out of the ſaid Burrough of *Wingham-ſtreet* and Pariſh of *Wingham*, and out of the County of *Kent* at large, and within the Liberties of the *Cinque Ports*; and often reſided

in *Ramſgate* aforeſaid from *Monday* till *Saturday*; but reſided within the ſaid Burrough and Pariſh of *Wingham* greateſt Part of the ſaid Year—

And it appearing alſo that the ſaid Burrough of *Wingham-ſtreet is not of as large Extent* as the ſaid Pariſh of *Wingham*; but that *Part* of the ſaid Pariſh of *Wingham is within another Burrough*; and that the ſaid *John Hunt never did any Act whereby he could gain a Settlement* in the ſaid Pariſh of *Wingham* or elſewhere out of the ſaid Pariſh of *Sellindge*, ſave as aforeſaid;—

And that the ſaid *William Hunt* the Elder and his ſaid Wife and Children, being actually become chargeable to the ſaid Pariſh of *Wingham*, were removed by the ſaid Order from *Wingham* to *Sellindge* as the Place of their laſt legal Settlement; and that the ſaid *William Hunt the Elder and his ſaid Children or any of them never did any Act to gain a Settlement in the ſaid Pariſh of* Wingham *or elſewhere, or to avoid the ſaid Certificate*; and that the Children of the ſaid *William Hunt* were of the ſeveral Ages herein before mentioned and not more, at the Time of making the ſaid Order—

Hereupon the Seſſions *quaſh* the Order of the two *Juſtices*.

On *Thurſday* 27th *Oct.* 1743, Sir *John Strange* moved to quaſh this Order of Seſſions: And a Rule was made to ſhew Cauſe why it ſhould not be quaſhed.

The Queſtion turned upon 9 & 10 *W.* 3. *c.* 11. "Whether the "Facts ſtated in the ſpecial Caſe *did* or *did not* amount to the EXE-"CUTING an annual Office in the Pariſh, being LEGALLY PLACED "therein." The two Juſtices thought that they did *not*: The Seſſions were of Opinion "that they *did*."

The Counſel who now ſhewed Cauſe, argued that it is not neceſſary that he be appointed *by the Pariſh*; or that he be *ſworn into the Office*: and they cited the Caſes of *Gatton* v. *Newick*, *H.* 10 *Ann.* and *Rex* v. *The Inhabitants of* * *St. Maurice* in *Winchester*, *P.* 8 *G.* 2. *B. R.* and ‖ *Karſington in Oxford* v. *Holy Trinity in London*, *H.* 2 *G.* 1. In the laſt of which Caſes, the Perſon appointed did not take the Oath till half a Year after he was choſen to the Office: So that he could not be ſaid to have ſerved the Office *for a Year*, if it was neceſſary to be *ſworn* into it.

* *V. ante*, No. 10.

‖ *V. ante*, pa. 30, 31.

They ſaid, it was not neceſſary to live conſtantly in the Place where he ſerved the Office: It is enough, that it was his *general* Reſidence. Though he actually executed only one Warrant, yet he was willing and ready to execute all that had offered. It don't appear that there *were* any more.

WINGHAM and SELLINDGE.

The ſingle Queſtion is, Whether he was LEGALLY PLACED in the Office.

Now the *Court-Leet* may *legally* place him in the Office: And they did ſo. 'Tis true, the *Evidence* of his Election is not *completely* ſtated on either ſide: But as far as it goes, it is in Favour of the Election; and is ſupported by an *actual Execution* of it, and continuing in it all the Year.

On the other Side (againſt the Order of Seſſions,) it was argued that as he was *not ſworn in at all*, he could not be *legally placed* in the Office: For what can "*legally* placed" mean, if this can be eſteemed Evidence of a *legal* Placing? They cited 8 *Rep.* 77. *b.*

It is a Rule of Evidence, "That the *beſt* Evidence that can be "had muſt be produced:" Which in this Caſe ought to have been a Copy of the *Preſentment* of the Jury of the Leet, which is a Court of Record; and Borſholders are, by Law, to be *preſented* by the Jury of the Leet. Nothing but a local *Cuſtom* to the contrary can alter that *Method* of Election. Now here is *no* Evidence of a *Preſentment at the Leet*, or any *Record of the Election*: It is only *Hearſay*, out of the Mouth of his Wife.

Lord Chief Juſtice LEE obſerved, that it does not appear whether *John Hunt's Wife* was *alive* or not. *If* ſhe *was*, her *own* Evidence at leaſt ought to have been had; and not her Huſband's Account of what ſhe *told* him.

The Circumſtance of *John Hunt's* going to work in another Pariſh, he laid out of the Caſe, as not affecting his Settlement, if otherwiſe a good one.

After having ſtated the Caſe—He ſaid, that upon an Order wherein the Facts were ſpecially ſtated, the Court muſt take it that *all* the Evidence which *appeared to the Seſſions* was *ſtated by them*. Now the Act requires a *legal Placing* in the annual Office. And *what Evidence* is here ſtated? It is ſtated negatively, that there was *no Preſentment*, *no Admiſſion or Swearing*. So that here is *no Foundation for ſupporting* a *legal* Placing. And the Evidence of being *told of the Tally* is nothing that can merit any Regard. It is yet worſe, if the Wife be *alive*; becauſe if ſo, ſhe ſhould have given it *herſelf*.

Then he is to be conſidered as *Part of his Father's Family*, *as to reſorting back* to the *Father's Settlement*, *though* he is a married Man; for he has gained *none of his own*; and, being actually chargeable, muſt be ſent to that which he derives from his Father, who was certificated from *Sellindge*.

As

As to the gaining a Settlement by executing an annual Office in the Burrough which is not co-extenſive with the Pariſh—It was ſettled in the Caſe * of *St. Mary* and *St. Lawrence, Reading*, "That "it was executing an annual Office IN the Pariſh; though the Bur- "rough extended further than the Pariſh of *St. Lawrence*." But that is not material to be conſidered here; becauſe the Evidence of the *legal Placing* in the Office is found in the Negative: For, as *no Preſentment* was *offered in Evidence*, we muſt take it that there *was no Preſentment* at all.

WINGHAM *and* SELLINDGE.

* *M.* 9 *Ann. B. R. V. Lucas*, 13.

Therefore the Order of the two Juſtices muſt be confirmed; and the Order of Seſſions quaſhed.

THE THREE OTHER JUDGES concurred in the Opinion "that there appeared *no Sort of Evidence*, none ſuch at leaſt as could "be regarded, of the *legal Placing* in this Office:" But, on the contrary, the *material* Part of the Evidence was in the Negative, and ſhewed that he was *not* legally placed in it.

Per Cur.—

RULE *made* ABSOLUTE *for* QUASHING *the Order of Seſſions and* AFFIRMING *the Original Order.*

Eaſter Term

17 Geo. 2. 1744.

Rex *v.* Inhabitants of Hilperton.

No. 77.

Tueſday 17th *April* 1744.

A *Certificate* may be good, without expreſſing the Paupers to be *legally ſettled*, if it contain Expreſſions *tantamount*.

TWO Juſtices made an Order for the Removal of *Richard Hicks*, *Mary* his Wife, and *Mary* their Daughter from *Chatterhouſe-Hinton* in the County of *Somerſet* to *Hilperton* otherwiſe *Hilprington* in the County of *Wilts*: And, upon Appeal, the Seſſions confirmed this Order.

HILPERTON *and* CHARTER-HOUSE HINTON.

The ſpecial State of the Caſe was this—*Richard Hicks*, the Pauper named in the ſaid Original Order, Huſband and Father (reſpectively) of the other Paupers therein named, was born in the Pariſh of *Freſhford* in the ſaid County of *Somerſet*, and legally ſettled there.

The ſaid *Richard Hicks*, when about the Age of ten Years, by Indenture bearing Date ſome Time in the Year of our Lord 1714, was *bound an Apprentice* to one *William Hudd* ſince deceaſed, who then dwelt in the ſaid Pariſh of *Hilperton* otherwiſe *Hilprington*, and followed the Trade of a Broad-Weaver there: And accordingly, the ſaid *Richard Hicks*, the Day after the Execution of the ſaid Indenture, entered into the Service of the ſaid *W. Hudd* of *Hilperton* aforeſaid, in Purſuance of the ſaid Indenture, and continued in the Service of, and with the ſaid *William Hudd*, in *Hilperton* aforeſaid, to the Time of the Death of the ſaid *William Hudd*; which happened, at *Hilperton* aforeſaid, in about five Years after the Date of the ſaid Indenture, and during the Continuance thereof.

That the ſaid *William Hudd*, before the Execution of the ſaid Indenture, upon his the ſaid *William Hudd's* firſt coming into the ſaid Pariſh of *Hilperton* otherwiſe *Hilprington*, did procure and bring with him *a Certificate* bearing Date the 9th Day of *December* in the Year of our Lord 1712, executed ſigned and ſealed by and under the Hands and Seals of the then Churchwardens and Overſeers of the Poor of the ſaid Pariſh of *Charterhouſe-Hinton*, atteſted and ſubſcribed by three credible Witneſſes, and allowed of and ſubſcribed by and under the Hands of two of the then Juſtices of the Peace of and for the ſaid County of *Somerſet*; and directed to the Churchwardens and Overſeers of the Poor of the ſaid Pariſh of *Hilperton*, in the Words and Figures following, that is to ſay—

"*Somerſet*—To the Churchwardens and Overſeers of the Poor of "the Pariſh of *Hilperton* in the County of *Wilts*, and to every and "either of them—Theſe are to certifie you and every of you That "We the Churchwardens and Overſeers of the Poor of the Pariſh "of *Charterhouſe-Hinton* in the County of *Somerſet* do, and every "and each of us doth hereby declare that *William Hudd*, Broad-"Weaver, and *Deborah* his now Wife, and their Children, of our "ſaid Pariſh of *Charterhouſe-Hinton*, *now are Inhabitants of our ſaid* "*Pariſh*, and ſo ſhall, from Time to Time and at all Times here-"after be taken and acknowledged to be Inhabitants thereof: And "we doe hereby promiſe unto you and your Succeſſors in your ſe-"veral Offices, That they the ſaid *William Hudd* and *Deborah* his "Wife,

" Wife, and the Children they now have, or the Children that " they ſhall or may have, ſhall return or be returned and provided " for, as Inhabitants of our ſaid Pariſh, without putting you or " your ſaid Pariſh of *Hilperton* to any Charge concerning them. " In Witneſs whereof we have hereunto ſet our Hands and Seals " this 9th Day of *December Anno Domini* 1712, *Anno R R Annæ* " *D G Magnæ Britanniæ &c, undecimo. John* † *Scott. Robart* " † *Hitchman* Churchwardens. *William Grant* † *Henry Franſeſs* " † Overſeers. Atteſted by us—Witneſs—*Edward Willſhear.* " *Daniel Hiſcock. James Petters.*

" *Somerſett ſs.* We whoſe Hands are hereunto ſubſcribed, being " two of her Majeſty's Juſtices of the Peace for County aforeſaid, " doe allow of the above Certificate, this 27th Day of *April A°* " *Dom.* 1713. *Jo. Lanſdown. Rob. Smith.*"

Which ſaid Certificate the ſaid *William Hudd*, upon his firſt coming into the ſaid Pariſh of *Hilperton* otherwiſe *Hilprington*, previous to the Execution of the ſaid Indenture, did deliver unto the then Churchwardens and Overſeers of the Poor of the ſaid Pariſh of *Hilperton*; and did continue in the ſame Pariſh, under the ſaid Certificate, to the Time of his the ſaid *William Hudd's* Death.

That the ſaid *Richard Hicks*, after the Death of his Maſter, ſerved no further under the ſaid Indenture, nor did any other Act whereby to gain a Settlement.

And this Court [the Seſſions] being of Opinion " That the *ſaid* " *Certificate was not conformable to Law*," this Court is therefore of Opinion " that the ſaid *Certificate was no Obſtruction* to the ſaid " *Richard Hicks*'s obtaining a Settlement by Virtue of the ſaid *In-* " *denture and Service thereunder* as aforeſaid in the ſaid Pariſh of " *Hilperton* otherwiſe *Hilprington*;" and doth confirm the ſaid original Order: And the ſame is hereby confirmed accordingly.

On *Saturday* 11th of *Feb.* laſt, a Motion was made by Mr. *Gould* to quaſh theſe Orders: For, the *Certificate is good* within 8 & 9 *W.* 3. *c.* 30. Conſequently, by 12 *Ann. ſtat.* 1. *c.* 18. *ſect.* 2. the Service of the Apprentice to a Certificate-man is *not* available to gain a Settlement.

The only Exception that can be taken to the Certificate is, that the Words " *legally ſettled*" are not in it. But there are Words *tantamount*. The Certificate admits them to be *Inhabitants* of their Pariſh of *Charterhouſe-Hinton*: And it ſhall be taken moſt ſtrongly againſt the Makers of it.

This

HILPERTON and CHARTERHOUSE HINTON.

This is a new Case: and therefore none can be cited on one Side or the other.

Mr. Gundry, on the same Side, said the Question depended singly upon the Goodness of the Certificate.

A Rule was then made to shew Cause: And now it was, upon Mr. *Gould's* Motion,

MADE ABSOLUTE.

Note: *There was no Defence.*

No. 78.

Rex *v.* Inhabitants of Beccles.

Tuesday 1 *May* 1744.

Absence, BY CONSENT, in the *Middle* of the Year, will not defeat a Settlement by *Hiring* and *Service*.

V. Sir *John Strange* 1207. S. C.

TWO Justices made an Order for the Removal of *Thomas Elem* and *Ann* his Wife from *Lowestoft* to *Beccles* (both in *Suffolk:*) And the Sessions, upon Appeal, confirmed that Order.

Special Case—*Thomas Elem*, the Person removed, being legally settled at *Beccles*, let himself, some short Time before *Michaelmas* 1732, to *Samuel Corbett* a Blacksmith, in *Lowestoft*, at the Wages of 3 *l.* or 3 *l.* 10 *s.* to serve him there for one *whole* Year from the said *Michaelmas* to the *Michaelmas* following, *to* RECEIVE THE SAID WAGES *from Time to Time as he wanted*; and accordingly entered upon his said Service on the *Michaelmas* Day, and continued his said Service until the *Michaelmas* following: And then he again let himself for *another* Year to his said Master, and continued *about ten Weeks*; when he and his Master agreed to part, and actually did part.

But it further appeared to the Sessions, That the said *Thomas Elem*, *within the Year*, WORKED, *with his* MASTER'S CONSENT, *for a* WEEK, *with one Lincoln*, as a *Journeyman*-Blacksmith; and, with the *like Consent*, with one *Lawes*, for a FORTNIGHT; and at some Times, *not exceeding twenty-four Hours at any* ONE *Time*, *nor above* THREE DAYS IN THE WHOLE, within the said Year, with his *Master's Consent*, did go off TO SEA, *in a Fishing-boat* belonging to Mr. *Manclark*. And it was *agreed* between the said *Elem* and his Master, at the Time of such Absence, that the said *Elem should have all the Wages he then earned*, the said CORBETT DEDUCTING *during the Time of such Absence in Proportion* to his aforesaid Wages of 3 *l.* or 3 *l.* 10 *s.* And that the said *Lawes*, *Lincoln* and *Manclark* severally *paid him the said Elem* for the *Time he so worked with them*; and the said *Elem allowed the said Corbett*, *out of his said Wages*, *for*

for the Time of his ſaid Abſence: So that *Corbett received no Part* of the Wages the ſaid *Elem* earned during his Abſence; but *only deducted a proportional Part* of the ſaid Wages of 3 *l.* or 3 *l.* 10 *s.* Beccles and Lowestoft.

Therefore the Court [of Seſſions] is of Opinion "that the ſaid "*Elem* hath *not* gained any legal Settlement at the Pariſh of *Loweſ-*"*toft* aforeſaid, by Virtue of the *aforeſaid Service*;" and doth affirm the ſaid Order.

On *Saturday* the 14th of *April* laſt, a Motion was made by Mr. *Staniford* and Mr. *Lloyd*, to quaſh theſe Orders; and the Court did not ſeem then to doubt of its being a good Settlement in *Loweſtoft*.

RULE *to ſhew* CAUSE.

Cauſe was now ſhewn: And it was argued.

In Support of theſe Orders, it was urged by Mr. *Pilſworth* and Mr. *Vanbeythuiſſen*, Counſel for *Loweſtoft*, that what was here ſtated amounted to a DISSOLUTION *of* the Contract: And when the Contract was once diſſolved, it could not be taken up again and continued. It appears alſo, from the *Manner of the Wages being payable*, (not at the laſt, but at particular precedent Times,) that he was no more than a *Journeyman* to *Corbett*.

The Act of 3 & 4 *W.* & *M.* c. 11. has been conſtrued *ſtrictly*, with Regard to *Hirings*: 2 *Salk.* 535. the Caſe of *Dunsford* and *Ridgwick*. And there is the *ſame Reaſon* for Strictneſs with Regard to *Service*.

In *M.* 1 *G.* 1. *B. R.* between the Pariſhes of * *Pawlet* and *Burnham*—the Settlement was holden to be in *Burnham*; becauſe the Servant went away three Weeks before the End of the Year, by Conſent of the Maſter, and 6 *s.* was abated of his Wages. * *V. Foley* 206. and *ante*, pa. 69. S. C. cited.

Lord Chief Juſtice LEE obſerved that the *whole Abſence* of the preſent Pauper in the firſt Year, was juſt *three Weeks and three Days, by the Conſent of his Maſter*: And the Money deducted out of his Wages was to be in *Proportion to his Abſence*.

Firſt, It appears that the Pariſh of *Loweſtoft have had* all that the Words or the Intention of the Act of Parliament require: For there was a clear *Hiring for a Year*; and taking in the ten Weeks of the ſecond Year, a *Service* for *more than a Year*.

We *can not intend any Thing of a* FRAUD: For *none is ſtated*.

The Queſtion depends upon † two Acts of Parliament. Upon the ‡ *Negative* Act, it is not neceſſary that the Service be with the *ſame Perſon*: It is ſufficient if it be with the *Succeſſor* in the Farm, or the *Aſſignee*. Therefore *this* Act has *not* been taken ſo ſtrictly. † *V.* 3 & 4 *W.* & *M.* c. 11. 8 & 9 *W.* 3. 30. ‡ 8 & 9 *W.* 3. c. 30.

Then

BECCLES *and* LOWESTOFT.

Then the Agreement about the *Payment of the Wages*, "*as the* "*Servant might want it*"—will *not vitiate* the Contract. Nor will the Contract be *diſſolved* by any Thing here ſtated. It is only a *Licence* of Departure for a certain Time: The *Contract remains*.

Indeed where the Servant departed, *by Conſent of both Parties three Weeks before the End* of the Term, the Contract was diſſolved; as in the Caſe of *Pawlet* and *Burnham*. [*V. ante*, pa. 69.]

And according to the Caſes that have been determined, the ſubſequent Service of *ten Weeks* may be *taken in*, in the preſent Caſe.

But the Service *by the Maſter's Conſent*, with another Perſon, was *Service of the Maſter*: It is *not* neceſſary that the Service be with the *ſame Perſon*. Nay, *if* it had been *without the Maſter's Conſent*, yet the Abſence had been *diſpenſed with*, by the Maſter's thus *receiving him again*.

Therefore the original Order is wrong; and both Orders muſt be quaſhed.

THE THREE OTHER JUDGES concurred in Opinion "That this "was *no Diſſolution* of the Contract, but a mere *Lending* of the "Service of his Servant:" Than which, nothing is more cuſtomary in Harveſt-time.

Per Cur. unanimouſly—

Both Orders QUASHED.

V. Ante, No. 14. No. 20. Poſt. No. 85. *Rex* v. *Inhabitants of Goodneſton*: 1ſt *July* 1745. And the Caſes referred to at the Bottom of Page 48.

No. 79. Rex *v.* Inhabitants of Luffington.

The ſame *Tueſday* 1ſt *May* 1744.

Orders quaſhed, FOR AN IMPERFECT STATE OF THE CASE, reſpecting the Validity of a *Marriage*, by a Perſon *not* in Holy Orders. 1 *Wilſ. Wilſon.* *Rep.* 74. S. C.

TWO Juſtices made an Order for the Removal of *Eleanor* the Wife of *William Hellyar* from *Symondſbury* in *Dorſetſhire* to *Luffington* in *Somerſetſhire*: And the Seſſions, upon Appeal, confirmed that Order.

Special Caſe—About eighteen Years ſince, one *William Hellyar* was married to *Mary Hembury* of *Curry-Rivel* in *Somerſetſhire*, Spinſter, at the City of *Bath*, *by a Perſon in a black Coat and Band*, whom the ſaid *Mary Hembury* apprehended to be a Clergyman, but has ſince been informed that he was *a Layman*. That the matrimonial *Ceremony of the Church of* England *was duly read over*; *and a*

N. B. This is the *firſt* of the Settlement Caſes, reported by Mr. Serjeant *Ring*

Ring was properly made Uſe of; and the ſame was performed in a private Room in a Dwelling-houſe; and *not in a Church or Chapel.* That in Purſuance of ſuch Marriage, the ſaid *William Hellyar* and *Mary* cohabited as Man and Wife for the Space of nine or ten Years; but have not lived together ſince. That on or about the 10th of *June* 1742, the ſaid *William Hellyar* was regularly married to the ſaid Pauper *Eleanor* in the Pariſh-church of *Symondſbury*, by a Clergyman in Holy Orders, according to the Form of the Church of *England*, during the Life of the ſaid *Mary*, by Virtue of a Licence obtained by the ſaid *Hellyar* for that Purpoſe. And the Seſſions thereupon confirm the original Order.

On *Wedneſday* 1ſt *February* laſt, a Motion was made by Mr. *Gundry*, to quaſh theſe Orders: And a Rule was made to ſhew Cauſe.

1ſt Objection—It does not appear by the original Order, nor by the Order of Seſſions, that *William Hellyar's Settlement was at Luffington:* Which ought to appear, in Order to make the Removal of *Eleanor* thither, *in the Character of his Wife*, to be good.

2d Objection—His Marriage with *Mary Hembury* was a *good Marriage:* Conſequently that to the *Pauper* was *null.*

M. *Henley* and Mr. *Gould* now ſhewed Cauſe. As to the firſt Exception—It is adjudged by the two Juſtices "that *Eleanor's* laſt legal "Settlement was in *Luffington:*" And the Seſſions have not quaſhed this Order. Therefore it ſtands: And it muſt be good as *her original Settlement*; which it *might* be *originally*, and *independently* of *William Hellyar's* Settlement. The Order of the two Juſtices does not ſpeak of her *as* a *married* Woman, but *abſolutely.* So that *this* Exception will not affect the Order.

As to the 2d Exception—A Marriage, in Order *to have a* TEMPORAL *Effect*, muſt be *according to the Ceremonies of the Church of England.* The Caſe of *Haydon* v. *Gould*, in 1 *Salkeld* 120. is an expreſs Determination "that a Marriage celebrated by a Perſon not in "Orders is ineffectual and void;" and this, even in the Caſe of a Marriage between two Diſſenters: For that Marriage (which was by a Layman) did not intitle to Adminiſtration. I do not comprehend the Force of the Diſtinction made in that Caſe relating to the Wife and Children, "that perhaps *they* might intitle themſelves, by ſuch "Marriage, to a temporal Right, though the *Huſband* could not."

Beſides that Determination itſelf, in *Salkeld*, there is a Caſe in *Swinburn* cited, where ſuch a Marriage was ruled *void:* And the *Manner and Form of Pleading* is ſpecified; which Both ſhew the contrary to that Diſtinction.

LUFFINGTON *and* SYMONDSBURY.

As to *Wigmore's* Caſe in 2 *Salk.* 432. where *Holt* ſays "that by "the Canon-law, a Contract *in verbis de præſenti is a Marriage*; "and the Spiritual Court can not puniſh for Fornication"——In 6 *Mod.* 155. *Collins* v. *Jeſſat* he ſays the direct contrary, *viz.* "That "they *are puniſhable by eccleſiaſtical Cenſures*, where the Contract is "*per verba de præſenti*, if they cohabit before Marriage *in facie* "*Eccleſiæ*." So that in *Wigmore's* Caſe he can only mean what he "here explicitly ſays with Reſpect to the *very Parties* themſelves, "that they could not *releaſe* one another, or diſſolve their own "mutual Agreement."

But it is plain that the Law does not conſider theſe Marriages as *effectual* to any *temporal* Purpoſe. 1 *Siderf.* 13. Sir *Robert Pain's* Caſe. And 2 & 3 *E.* 6. *c.* 21. ſhews that the Parliament took the Common Law ſo as appears by the * Proviſo therein. The Statute of 12 *C.* 2. *c.* 33.† was made to confirm Marriages made by Juſtices of Peace during the Uſurpation. And 6 & 7 *W.* 3. *c.* 6. 7 & 8 *W.* 3. *c.* 35. and 10 *Ann. c.* 19. are all confined to Marriages by Perſons in holy Orders.

* *V.* Sect. 3.

† Confirmed by 13 *C.* 2. *c.* 11.

From whence, it is plain that the Parliament did not look upon Marriages by Perſons *not* in holy Orders to be binding.

Indeed, *as to Diſſenters*—Their Caſe may be different; as being *virtually diſpenſed with*, by the Toleration-act, from complying with the Common-Prayer Book in this Reſpect. In 3 *Lev.* 376. *Hutchinſon and Ux.* v. *Brookebanke*, a Prohibition went, and the Plaintiff was to *declare* upon it, ſo that the Law might be tried upon *Demurrer*. *Salk.* 437, is S. C.

But there is *no Caſe*, where a Marriage *by a Layman* has been holden *good*.

Indeed, in Ejectment, Cohabitation may be urged as an *Evidence* of legal Marriage.

Mr. *Gundry—contra*, for quaſhing the Orders, enforced his Exceptions to them.

1ſt, This is an undue Removal of *Eleanor* to *Luffington*, *as the Wife* of *Hellyar*; when it is not adjudged that *Luffington* was *his* Place of Settlement.

The Order of Seſſions contains the *whole* of the Caſe; and then ſays that the Seſſions, *on the Caſe* As *above ſtated*, are of Opinion ſo and ſo. This Court can only judge upon the Facts that they have returned up to them.

2dly, The Gentlemen ſay, "that no Marriage is *good*, unleſs by "a *Prieſt in holy Orders*."

But

But *Wigmore's* Case shews that the *Contract in verbis de præsenti* is the *Essence* of Marriage. LUPPINGTON and SYMONDSBURY.

They would infer from the Acts of Parliament, "that the *Legislature* have always looked upon these Marriages as null and "void."

But 2 & 3 *E.* 6. is not to the Purpose: And 12 *C.* 2. *c.* 33. was made for quieting the People's Minds. The other Acts of Parliament rather countenance them, than otherwise. Indeed there is a Proviso in one of them "that they shall not be of * *greater* Force "than they were before." But upon the *whole*, these public Acts are a *tacit* ACKNOWLEDGEMENT of their Validity.

* *V.* 6 *W.* 3. *c.* 6. *Sect. ult. & penult.*

The Case of *Tarry* v. *Browne*, in 1 *Siderf.* 64. is for me—All that the Court say is, that "if the Marriage had been by Force and "Duresse, it had been void and no Marriage at all."

In the Case of *Haydon* and *Gold*, it seems to be admitted that they might be intitled to all *temporal* Rights; though not to *spiritual*.

Bunting's Case in *Moor* 169, proves that the *Contract makes the Marriage:* And the second Marriage made after a Contract *per verba de præsenti* was held not only voidable, but absolutely *void*.

The Husband could not marry again, without being liable to be indicted. 3 *Inst.* 88.

Besides, it does not appear that the Person who married *Mary Hembury* was NOT *in holy Orders*. She *apprehended* him *to be so*; and was *only informed* since, "that he was not so."

This is the lowest Interest that a Woman can derive from Matrimony.

Lord Chief Justice LEE held the 2d Point to be of great Consequence, and to require great Consideration: But he thought the Case very imperfectly stated.

As to the Person in a black Coat and Band *&c.*—It is ONLY EVIDENCE of the Circumstances of the first *Marriage:* Whereas the Sessions should *have* DETERMINED *whether the Marriage* WAS *by a Clergyman in holy Orders* OR NOT. But this they have not done.

Mr. Justice CHAPPLE too held the State of the Case to be *imperfect*.

Therefore, FOR THE IMPERFECTION OF THE STATE OF THE CASE—

Both Orders were QUASHED.

LUFFINGTON *and* SYMONDSBURY.

Mr. Juſtice WRIGHT and *Mr. Juſtice* DENISON were ſilent.

Mr. HENLEY hinted at the ſending the Orders down again to the Seſſions, to have the Caſe more completely ſtated.

But LEE *Chief Juſtice* ſaid—Both Orders muſt be quaſhed.*

* *N. B.* They certainly were *not quaſhed on the Merits:* And no particular Reaſon was given why they were quaſhed at all. It does not appear to me, why the Court did not refer the Caſe back to the Seſſions, to be more fully ſtated; as has been done in numberleſs other Inſtances.

Trinity Term

17 & 18 Geo. 2. 1744.

No. 80.

Rex *v.* Inhabitants of Llanvair Dyffryn Clwyd.

Wedneſday 30th *May* 1744.

An Indenture of Apprenticeſhip, *unſtamped*, is VOID; and cannot be given in *Evidence*.

TWO Juſtices made an Order for the Removal of *Catharine Edwards* (the Widow of *John Edwards* lately deceaſed,) *Elizabeth, Catharine, Anne, Edward* and *Thomas* their Children (aged 12, 10, 8, 6 *and* 3 Years reſpectively) from *Llanlidan* to *Llanvair Dyffryn Clwyd* (both in *Denbighſhire:*) And the Seſſions, upon Appeal, confirmed that Order.

Special Caſe—The ſaid *John Edwards* was, about two Years ago, by Virtue of an Agreement in Writing OR *Indenture* duly entered into between *John Jones* of the one Part, and one *Edward Jones* Father of the ſaid *John Edwards*, for and on the Part and Behalf of the ſaid *John Edwards* his Son, then an Infant, of the other Part, thereby put and placed to be an Apprentice to the ſaid *John Jones* for and during the Term of three Years, to learn his Art or Trade of a Taylor: And by the ſaid Agreement OR *Indenture*, the ſaid *John Jones* the Maſter was to provide the ſaid Apprentice *John Edwards* with Meat Drink Waſhing and Lodging during the ſaid Term of three Years.

That

That the ſaid Agreement OR *Indenture* ſo entered into was NOT STAMPED according to any Act of Parliament; *nor ſigned by* THE APPRENTICE *John Edwards*; nor was the ſaid *John Edwards* a *Party* thereto: But it was ſigned executed and entered into, by the ſaid *Edward Jones* the Father, for and on the Part and Behalf of the ſaid *John Edwards* his ſaid Son. LLANVAIR DYFFRYN CLWYD *and* LLANLIDAN.

That the ſaid *John Edwards* well and faithfully *ſerved* his ſaid Maſter *John Jones*, as an Apprentice, by and under the ſaid Agreement OR *Indenture* as aforeſaid, *in the Pariſh of Llanvair Dyffryn Clwyd* aforeſaid, for and during all the ſaid Term of three Years, according to the Purport true Intent and Meaning of the ſaid Agreement *or* Indenture.

That he the ſaid *John Edwards* the Apprentice alſo *reſided inhabited and lodged* with his ſaid Maſter *John Jones in the Pariſh of Llanvair Dyffryn Clwyd* aforeſaid during all the ſaid Term of three Years.

That the Paupers or any of them have *not gained any Settlement elſewhere*, in their or any of their own Rights.

Whereupon the Seſſions is of Opinion "That the laſt legal Set-"tlement of the ſaid ſeveral Paupers is in the Pariſh of *Llanvair* "*Dyffryn Clwyd.*"

Therefore they confirm the Order of the two Juſtices, with Coſts.

On *Monday* 30th *April* laſt, a Motion was made by Mr. *Gundry*, to quaſh theſe Orders; and he obtained a Rule to ſhew Cauſe why they ſhould not be quaſhed.

1ſt Objection. The Apprenticeſhip ought to be BY INDENTURE: Whereas this is only ſtated to be "by Agreement OR Indenture."

2d. The Indenture (if it was an Indenture) ought to be STAMPED: And *not being ſtamped*, it ought not to have been *admitted in Evidence*; being *abſolutely void* to all Intents and Purpoſes whatſoever, and inadmiſſible in Evidence.

3d. The APPRENTICE *never ſigned* or executed, or was even Party to this Agreement or Indenture.

Mr. *Lloyd* now ſhewed Cauſe. To the 3d Objection, "of the "Apprentice's not executing or even being Party"—he anſwered, "That it was *not neceſſary:* If it was, no *Infant* could ever be "bound or learn a Trade."

But as to the 2d Exception—He agreed that if the Caſe of * *Cuerden* and *Leyland* was to be looked upon as concluſive, it would be an

* *P.* 4 *G.* 2. *B. R.* v. Sir *J. S.* 903. and *ante*, pa. 92—96.

LLANVAIR DYFFRYN CLWYD *and* LLANLIDAN.

an Authority againſt him. But there was a Circumſtance in that Caſe "that the *Sixpenny Duty was not paid*;" and therefore by 8 & 9 *Ann. c.* 9. the Indenture *could not be given in Evidence at all:* Which is not the preſent Caſe: * But

THE COURT § ſaid it was holden in that Caſe, upon the Words of the Acts, "that the Indenture *not being ſtampt*, was ABSOLUTELY VOID *to all Intents and Purpoſes* whatſoever."

And *Mr. Juſtice* DENISON mentioned a ſubſequent Caſe determined accordingly; *viz. Rex* v. *the Inhabitants of Holbeck, M.* 16 *G.* 2. *B. R.* ‖

Per Cur.

RULE *made abſolute for* quaſhing *both Orders.*

* *V. ante*, pa. 96.

§ L. C. J. *Lee.* was not preſent.

‖ *V. ante*, No. 69. pa. 198 to 201. S. P. And *vide*, *Poſt.* No. 120.

Note—No Mention was now made on *either* Side, of the *firſt* Exception taken on the original Motion: Nor did the *Court* ſay any thing, as to the *third.*

Michaelmas Term

18 Geo. 2. 1744.

No. 81.

Rex *v.* Inhabitants of Fittleworth.

Wedneſday 28th *Nov.* 1744.

In order to avoid a *Certificate*, and gain a Settlement, by OFFICE, it is not neceſſary that the *Office* ſhould extend throughout ALL the Pariſh; though it muſt be *executed* for the Space of a *whole* Year. 1 *Wilſ. Rep.* 81. S. C.

TWO Juſtices made an Order for the Removal of *William Overington*, *Mary* his Wife, and their three Children, *William*, *Mary* and *Jane* (aged about 10, 8, and 5 Years reſpectively) from *Fittleworth* to *Pulborough*, (both in *Suſſex:*) And, upon Appeal, the Seſſions diſcharged that Order.

Special Caſe—The ſaid *William Overington* came into *Fittleworth* with a *Certificate* from *Pulborough*, dated 31 *July* 1736, duly atteſted and allowed. He continued in *Fittleworth*, without gaining any Settlement there, till *Michaelmas* laſt: Soon after which Time, at a Court Leet of the Biſhop of *Chicheſter* for the Manor of *Amberley*

FITTLEWORTH and PULBOROUGH.

berley in the ſaid County, on the 24th of *October* laſt paſt (within which ſaid Manor the ſaid Pariſh of *Fittleworth* lieth,) the ſaid *William Overington* was duly elected and ſworn *Tything-man* for the Tything of *Cold Waltham* in the ſaid County; *which ſaid Tything doth* NOT *extend through* ALL *the ſaid Pariſh of* Fittleworth, *but comprehends that Part of it wherein the ſaid* William Overington *reſided.*

That the ſaid *William Overington continued in the Execution* of the ſaid Office *in* the ſaid Pariſh of *Fittleworth*, UNTIL *the 30th Day of* March *laſt*. But the ſaid *William Overington* on the 27th Day of the ſame Month of *March* did *actually become chargeable*, and *aſked and received Relief* from the ſaid Pariſh of *Fittleworth*. Whereupon, upon the Complaint of the ſaid Pariſh of *Fittleworth*, the abovementioned Order was made for removing the ſaid *William Overington* and his ſaid Family from *Fittleworth* to *Pulborough*.

The Seſſions are of Opinion "that the ſaid *William Overington*, "by the Means aforeſaid, hath AVOIDED HIS CERTIFICATE and "gained a Settlement in *Fittleworth*." And thereupon they diſcharge the Order of the two Juſtices.

On *Wedneſday* 30th of *May* laſt, a Motion was made by Sir *John Strange* and Mr. *Burrell*, to quaſh this Order of Seſſions: And a Rule was made to ſhew Cauſe why it ſhould not be quaſhed, and the original Order affirmed.

It was then urged, that though it had been ſettled in the Caſe of **St. Mary Calendar* and *St. Maurice in Wincheſter*, *P.* 8 *G.* 2. *B. R.* and in the Caſe of ‖ *Holy Trinity* and *Garſington*, *Tr.* 2 *G.* 2. *B. R.* "That executing for one WHOLE Year an annual Office WITHIN "*the Pariſh*, being legally placed therein, *is ſufficient*," (whereas formerly it was doubtful whether the Office muſt not be *parochial*;) yet it had never been carried ſo far as that executing it PART *of the Time* and in PART of the *Pariſh*, only, ſhould be ſufficient.

* *V. ante*, No. 10.
‖ *V. ante*, p. 30.

On *Wedneſday* laſt (the 21ſt Inſtant) Cauſe was ſhewn by Mr. *Lloyd* and Mr. *Humphryes*, againſt quaſhing this Order of Seſſions.

They ſaid that the Act of Parliament of 9 & 10 *W.* 3. *c.* 11. had not *made* it neceſſary, nor did the cited Caſes *prove* it to be neceſſary, that the Office ſhould be executed for a *whole Year*, or extend thro' the *whole Pariſh*.

They added, That the Juſtices had no Juriſdiction to remove him *during* his being *in the Execution* of his Office. So a Servant is irremoveable during the Service; and an Apprentice, during the Contract.

The

FITTLEWORTH *and* PULBOROUGH.

The Counſel for the Motion ſaid that the Queſtion did not depend on 9 & 10 *W.* 3. ſingly; but that 3 & 4 *W.* & *M. c.* 11. *ſect.* 6. ought alſo to be taken into Conſideration; which ſpecifies what Acts ſhall be equivalent to Notice; and one of them is executing an annual Office in the *Pariſh during one* WHOLE *Year:* And the latter Act of 9 & 10 *W.* 3. is moſt clearly *relative* to the former, of 3 & 4 *W.* & *M.*

Lord Chief Juſtice LEE obſerved that three Objections had been made to the Order of the two Juſtices.—

1ſt. That their Order cannot be confirmed; becauſe the Man was *not a Subject of their Juriſdiction*, being in the *Execution* of an Office to which the *Public* had a Right; and therefore the Juſtices could not interpoſe to remove him: And it was ſaid that even *Servants* were irremoveable *during* their Service.

But no Caſe has been cited to prove "that *Servants* are ſo:" And I ſhould *very much doubt it*. But here the Act of Parliament is *expreſs* "That the Juriſdiction ſhall not be exerciſed upon Certificate-"men *before* they become actually chargeable; but *then* (though "not before) the Juſtices are to have Juriſdiction to remove "them:" And there is *no Exception* of any Body whatſoever.

The 2d Objection—"*That the Office does not extend throughout* "*the* WHOLE *Pariſh*"—has no great Weight with me. For, the Act only ſays "it ſhall be an annual Office *in* the Pariſh:" And we are bound by the *expreſs Words* of the Act.

The 3d Objection is "That the Office has not been executed "during the Space of a WHOLE *Year*."

The Caſe of *Garſington* was not determined on *this* Head. Beſides, the Perſon was there legally placed in the Office, and *did execute it for a whole Year*. The Act does not ſay "a whole Year "*after Admiſſion*." The Swearing has Relation to the Placing in the Office.

The Act of 3 & 4 *W.* & *M. c.* 11. has Words which go *further* than this Act of 9 & 10 *W.* 3. *c.* 11. there, a *whole* Year's Execution is required by the *expreſs Words:* Here, the Words are "*Exe-*"*cute an annual Office in the Pariſh*, being legally placed therein." If this Act is not to be underſtood in the ſame Senſe as the former, there will remain nothing more than the legal Placing: For, *ever ſo little* Time's Execution would ſuffice, on that Principle, to make an Execution of an annual Office.

He

FITTLEWORTH and PULBOROUGH.

He ſaid, The Reaſon of theſe two Exceptions in 9 & 10 *W.* 3. which give a Settlement to Certificate-men, was for the Reward of their Service, and for the Perſon's being of ſuch Eſtimation as to be judged unlikely to become chargeable.

Upon the whole, he thought it reaſonable to give the *ſame* Conſtruction to *this* Act of 9 & 10 *W.* 3. as to 3 & 4 *W.* & *M.* and make a *whole Year's* Execution of the annual Office *neceſſary* towards gaining the Certificate-man a Settlement: Eſpecially as the contrary Conſtruction would reduce it to the *ſingle* Qualification only of a *legal Placing*; ſince *one Hour's* executing the Office would, upon *that* Conſtruction ſerve for an Execution of it within the Act.

Therefore he was for conſidering it, at leaſt.

Mr. Juſtice WRIGHT concurred.—The 9 & 10 *W.* 3. ſays "A Certificate-man ſhall gain no Settlement, unleſs by renting a "Tenement of 10 *l. per Annum*, or *executing ſome annual Office* in "the Pariſh being legally placed therein."

Now this muſt be *ſuch* an annual Office as by the Laws *then in Being* would *gain* a Settlement: And the former Act, of 3 & 4 *W.* & *M.* had made the "Executing an annual Office for a *whole* Year" equal to Notice, and *ſo* to gain a Settlement. But this Man has *not* gained a Settlement: He has *not* executed it for a *whole* Year. If ſo, then the Objection to the *Juriſdiction* of the Juſtices *drops*: For, by 8 & 9 *W.* 3. *c.* 30. *ſuch* a Perſon having aſked Relief becomes *actually and inſtantly removable*. And his removing *himſelf*, or being thus *removed* is tantamount.

Therefore there is no Inconvenience: For the Juſtices may appoint another Conſtable or Tythingman, as on a Removal out of the Pariſh.

And he held that it *need not* be an Office throughout the *whole* Pariſh: For, being an annual Office *within* the Pariſh is *ſufficient*.

Mr. Juſtice DENISON held the Objection to the Juriſdiction to be of no Weight at all; becauſe the Act of 8 & 9 *W.* 3. *c.* 30. is expreſs "that he ſhall be removed *as ſoon* as he becomes *actually* "*chargeable*;" and that Act has *no Exceptions*.

As to the Tything not being co-extenſive with the Pariſh—The *expreſs Words* of the Act are only "Some annual Office *in* the Pa-"riſh:" And we are *not to vary* from it; but muſt be directed by its *expreſs Words*.

As to the *Time* of executing the Office (which is the 3d and main Objection)—There has been *no Caſe on that Head*, that I know of. It was a Hardſhip on Pariſhes to be obliged to receive Certificate-

FITTLEWORTH *and* PULBOROUGH.

men: And therefore I take the Act of 9 & 10 *W.* 3. *c.* 11. to be *reſtrictive*; and *not to give any new Qualification*. It could never be the Meaning of that Law to give a Certificate-man a *greater* Qualification than a Pauper at large was intitled to.

And why ſhould the Legiſlature *confine* it to an *annual* Office, if they did not *intend* to require the Execution of it *for a Year*, as the Qualification for gaining a Settlement? The Conſtruction now attempted, would *introduce* a Qualification to a *Certificate-man*, which a *Pauper at large has not*: Which could never be the *Intention* of the Act.

Lord Chief Juſtice LEE ſaid he would think of it a little, on this Head of the Want of having executed it a *whole* Year. On the Reſt, he ſaid, he had *no Doubt*.

* Mr. Juſtice *Chapple* was abſent

Mr. Juſtice WRIGHT and *Mr. Juſtice* DENISON * were alſo clear "that the *other two Objections* were of *no Weight*."

CUR. ADVIS.

Lord Chief Juſtice LEE now delivered the Reſolution of the Court.

We are of the *ſame* Opinion that we declared before; *viz.* "That here is *not* a Settlement gained by this Certificate-man, by "the executing the Office of Tythingman, *in the* MANNER *as is ſpe-* "*cially ſtated in the Order of Seſſions*; becauſe the Execution of the "Office, *as there ſtated*, is an Execution *for the Space* ONLY OF "SIX MONTHS.

† 8 & 9 *W.* 3. *c.* 30.

MY Opinion on the † Act is this—That the Meaning of the Words "Unleſs he ſhall *execute* ſome *annual* Office in ſuch Pariſh, "*&c.*" is, That unleſs he does that Service which is a Performance of this Requiſite, which the Act preſcribes, *for the Space of a* WHOLE YEAR, he does *not* gain a Settlement. And here the Performance has been for LESS than *half* a Year: Therefore he has gained *no* Settlement *by it*.

And accordingly, the Rule muſt be (and it accordingly was) that

The Order of Seſſions be QUASHED: And
The Order of two Juſtices AFFIRMED.

As to the 2d Exception—*V.* Poſt. No 117, *Rex* v. *Inhabitants of Whitchurch*, *Eaſter Term* 1754, 27 G. 2. S. P.

Rex

Rex *v.* Inhabitants of Greenwich. No. 82.

TWO Juſtices made an Order for the Removal of *Hannah Wall*, Spinſter, from *Longdon* in *Staffordſhire* to *Greenwich* in *Kent:* And, upon Appeal, the Seſſions confirmed that Order.

The ſame *Wedneſday* 28th *Nov.* 1744.

Special Caſe—Hannah Wall, the Pauper, is the Daughter of *George Wall* deceaſed; who, in his Life-time, *declared to a Witneſs now examined*, That he had hired himſelf for a Year and ſerved a Year as a Livery-ſervant, at 7 *l.* Wages, to one Captain *Saunderſon*, Commander of the *William* and *Mary* Yacht, who had a Houſe and Family at *Greenwich*, and reſided there when not abſent on the King's Service; and that his *Maſter made frequent Voyages* to and from *Holland*; and that *he always attended him* in the ſame; that he *never was* 40 *Days* TOGETHER *at Greenwich*, though during his Service he *might be there* 40 *Days at* DIFFERENT *Times*.

Reſidence in a Pariſh for 40 Days at DIFFERENT TIMES, is ſufficient to compleat a Settlement by *Hiring* and *Service*.

And thereupon the Seſſions adjudged "that the ſaid *George Wall* "was ſettled in the ſaid Pariſh of *Greenwich:*" Under whoſe Settlement the ſaid *Hannah Wall* derived her's; not having gained any in her own Right.

On *Wedneſday* the 14th of *November* laſt, Mr. *Legge* moved to quaſh theſe Orders; for that upon this Caſe as ſtated, there is *no Foundation* to adjudge her Settlement to be at *Greenwich*. And a Rule was made to ſhew Cauſe why they ſhould not be quaſhed.

The Counſel for the Order (Sir *John Strange*) who was now to have ſhewn Cauſe againſt quaſhing them, propoſed to ſend the Seſſions Order back to the Seſſions, that they might ſtate the *Facts*, inſtead of ſtating mere *Evidence*; which is all that they have at preſent done.

And Mr. *Lloyd*, who was on the other Side, obſerved that it was *not even* a State of *Evidence*, but only of what a Man once *ſaid*; and that too was only "That he MIGHT be 40 Days there at diffe-"rent Times."

RULE ENLARGED.

On *Saturday* next after the *Octave* of St. *Hilary*, 18 *G.* 2. by Conſent of Sir *John Strange*, and on the Motion of Mr. *Legge*, it was referred to the Juſtices to ſtate the Facts more fully.

GREENWICH *and* LONGDON.

See the Case of *Rex* v. *Inhabitants of Sowton*, (*Ante* No. 40.) and the Cases referred to at the End of it.

And afterwards, on *Wednesday** 3d *July* 1745, upon the Motion of Mr. *Jarvis* and Sir *John Strange*, it being then stated "That he "DID reside forty Days at *Greenwich*, at different Times;" and Mr. *Legge* (who first moved to quash them) being now satisfied—

Both Orders were AFFIRMED.

* The *proper* Place, therefore, of this Case should have been under *Trinity Term* 1745. 18 & 19 *G.* 2. but it makes very little Difference.

Hilary Term 18 Geo. 2. 1744.

NO Case of this Sort was *determined:* Three or four Rules to *shew Cause* were obtained; which will come in their proper Places.

Memorandum—In this Vacation, *viz.* on 17th *March* 1744, died *Sir* WILLIAM CHAPPLE, second Judge of this Court. He was succeeded by *Mr. Serjeant* FOSTER, Recorder of *Bristol*.—See the Note at the Bottom of Page 247.

Easter Term

18 Geo. 2. 1745.

No. 83.

Rex. *v.* Inhabitants of Melborne.

Thursday 9th *May* 1745.

Officiating as Master of an *endowed* School, and receiving the *Profits*, will not avoid a *Certificate*.

TWO Justices made an Order for the Removal of *Alice Membury* and her nine Children (specifying their Names and Ages) from *Sheepshead* in *Leicestershire* to *Melborne* in *Derbyshire:* And the Sessions, upon Appeal, confirmed that Order.

Special

V. Sir *John Strange* 1225. 1 *Wilf. Rep.* 87. S. C.

MELBORNE and SHEEPSHEAD

Special Caſe—She was the Widow of *Thomas Membury* deceaſed: Which *Thomas Membury*, his Wife and Family were, by *Certificate* dated 30th *Nov.* 1733, duly certified and acknowledged to be Inhabitants legally ſettled in the Pariſh of *Sheepſhead*.

The ſaid *Thomas Membury* removed with his Family, from *Sheepſhead* to *Melborne*, *by Virtue of the ſaid Certificate*; and continued to reſide there to the Time of his Death, which happened in 1743.

The ſaid *Thomas Membury*, during ſuch his Reſidence at *Melborne*, *officiated as* SCHOOLMASTER *there*.

During his Continuance in the ſaid School, Lady *Betty Haſtings* did, by Deed indented and inrolled in the high Court of Chancery, bearing Date 14th *December* 1738, convey to the Hon. *John Dawney*, Eſq; and other Truſtees therein named, and to their Heirs, divers Lands and Tenements lying within the County of *York*, in Truſt to permit *John Benſon*, Clerk, Vicar of *Lodſham*, *Chriſtopher Weatherhead*, Clerk, Vicar of *Thorpe-Arch*, and *Robert Potter*, Clerk, Vicar of *Collingham*, and the ſucceeding Vicars for the Time being of the ſaid three Vicarages for ever, to receive and take the Rents and Profits of the ſaid Premiſſes for ever, and apply and employ the clear Monies raiſed thereby, for ſuch Intents and Purpoſes and in ſuch Manner as in and by the Schedules thereunto annexed are ſpecified or directed: In which ſaid Schedules are the following Words——"Alſo *the yearly Sum of* 10*l.* TO THE CHARITY-SCHOOL OF MELBORNE in the County of *Derby*, *to be* PAID *to the* VICAR *there for the Time being*." *Which Sum of* 10*l. the ſaid* THOMAS MEMBURY *received from the Vicar* of *Melborne* aforeſaid, from the Execution of the ſaid Deed to the Time of his Death in 1743.

That the ſaid Sum of 10*l.* was not appropriated to any other Uſe.

Therefore the Court of Seſſions, *apprehending* "*the ſaid Thomas* "*Membury hath gained a* FREEHOLD ESTATE *by receiving the ſaid* "10*l. a Year under the ſaid Deed*," confirm the Order, and diſcharge the Inhabitants of *Sheepſhead* from the ſaid *Alice Membury* and her ſaid nine Children.

On *Monday* 11th *Feb.* laſt, a Motion was made by Sir *John Strange* and Mr. *Lloyd*, to quaſh theſe Orders.

Their Objection was, That there are *only two* Methods whereby a *Certificate-man* can *gain a Settlement*; *viz.* renting a Tenement of 10*l. per Annum* Value; or executing ſome annual Office in the Pariſh, being legally placed therein: Whereas this is *neither of theſe* Caſes; *nor any Freehold*, either in Law or Equity.

MELBORNE *and* SHEEPSHEAD

Upon ſhewing Cauſe, now, for the Pariſh of *Sheepſhead*, it was urged by Mr. *Gundry*, Mr. *Ford*, and Mr. *Wilmot*, that there was not enough ſtated to ſhew that the two Juſtices had done wrong: And therefore the Court will ſuppoſe that they have done *right*; and the Order of the two Juſtices ought to ſtand confirmed.

However, if the Man was *Schoolmaſter for Life*, and had a *Freehold* in it, *that* would gain him a Settlement: And the receiving this Annuity of 10*l.* a Year, gives him as much Conſequence in the Pariſh as renting 10*l.* a Year.

Notwithſtanding the Confinement of a Certificate-man's gaining a Settlement, *to* the *two* Caſes of renting 10*l.* a Year, or executing an annual Office in the Pariſh; yet the Property of an Eſtate of his *own*, which renders him *irremovable from it*, has always been adjudged to *gain a Settlement:* And ſo, for the *ſame Reaſon*, will his being fixed in the Schoolmaſterſhip of an *endowed* School. This Payment of 10*l.* a Year to the Vicar was only *in Truſt for the Schoolmaſter*; and therefore 'tis the *ſame* Thing as if it had been made *immediately* payable to him. Surely, a Man who receives 10*l.* a Year is *leſs* likely to become chargeable, than a Man who pays 10*l.* a Year.

On the other Side; it was ſaid that the Pauper remains fixed upon *Sheepſhead*, by their Certificate, *unleſs* it appears that he has gained ſome other Settlement. Now here it only appears "that he *officiated* "as Schoolmaſter:" Nothing further appears.

Beſides, the Legacy of 10*l.* is *to the* VICAR, not to the Schoolmaſter; and for the Benefit of the *School*, not of the *Maſter*. *This* Man had no legal Demand for it: He only received it as an *occaſional Charity*.

There is *no Need to ſend this back*, to be further ſtated; becauſe, as there is not ſufficient ſtated to ſhew that the Man did or could gain a Settlement, the *Certificate* muſt *ſtand*. The Seſſions have plainly and manifeſtly determined *wrong:* For they *give the Reaſon* of their Adjudication; *viz.* their Apprehenſion "that the Man "GAINED a FREEHOLD ESTATE *by receiving* 10*l. a Year un*-"*der the ſaid Deed.*" And its being an annual Office was not before them.

Lord Chief Juſtice LEE—We muſt now determine upon all * the Orders: For we muſt take this ſpecial Caſe ſtated in the Order of Seſſions to be the Caſe upon which the two Juſtices removed the Paupers.

*There were three of them, in all.

By the Act of 9 & 10 *W.* 3. *c.* 11. *two* Caſes are ſpecified as gaining a Settlement to Certificate-perſons; *viz.* renting a Tenement of

of the Value of 10 *l. per Annum*; and executing an annual Office in the Pariſh, being legally placed therein. MELBORNE *and* SHEEPSHEAD

Now a *Schoolmaſter* is *no annual Office*: nor indeed does it appear that he officiated more than occaſionally: It don't appear that he had any *Right* to it; or even that he was *placed* in it.

Then as a *Tenement* of 10 *l.* a Year—This Annuity of 10 *l. per Annum* does not appear to be *appropriated to the Schoolmaſter*; nor does this Man appear to have any *Intereſt* in it, (though indeed he received it:) He could have no *Freehold* in it, beyond Doubt.

And the Seſſions have determined it upon the Reaſon of his having gained a Freehold *by receiving it*; Which he certainly has not. Therefore their Order is a *bad* one.

Mr. Juſtice WRIGHT and *Mr. Juſtice* DENISON concurred in the ſame Opinion "That by *receiving* this Charity he gained *no* "*Freehold:*" And they added, That as this was given to the *Vicar*, or at leaſt to *his Diſpoſal*, they ſuſpected Lady *Betty Haſtings* conſidered the *Vicar* as the Perſon who was *himſelf* moſt likely to teach the School.

*Per Cur.** unanimouſly—

Rule made abſolute for QUASHING *the* ORDERS.

Vide Poſt. No. 232. *Accord.*

* Mr. Juſtice *Foſter* was abſent. He took his Place on the Bench, as puiſné Judge of this Court, upon the firſt Day of this *Eaſter Term* 18 *Geo.* 2. (*viz.* 1ſt *May* 1745.)

Trinity

Trinity Term

19 Geo. 2. 1745.

No. 84. **Rex *v.* Inhabitants of St. Petrox, within the *Burrough* of Clifton-Dartmouth-Hardneſs.**

Friday 21ſt *June* 1745.

A *Pariſh Apprentice* may gain a Settlement, by ſerving 40 Days, in a *different* Pariſh, under an *Aſſignment*. And an Indenture binding ſuch Apprentice, being a *Female, until the Age of* 21 *Years*, ABSOLUTELY, is not *void*, but *voidable*; and can only be avoided by *four* Juſtices. 1 *Wilſ. Rep.* 96. S. C.

TWO Juſtices made an Order for the Removal of *Ann Giles* from *St. Petrox* to *Stoke Fleming* (both in *Devonſhire:*) And, upon Appeal, the Seſſions diſcharged that Order.

Special Caſe—ANN *Giles* was by Indenture dated 5th *Sept.* 1733, by the then Churchwardens and Overſeers of *St. Saviours*, within the Burrough of *Clifton-Dartmouth-Hardneſs*, with the Conſent of two Juſtices of Peace for the ſaid Burrough of *C. D. H.* by 43 *Eliz.* bound Apprentice to *Rebeccah Gregory* of the ſaid Burrough Widow, with her to *ſerve*, dwell and abide from the Date thereof UNTIL *ſhe ſhould have accompliſhed her full* AGE OF TWENTY-ONE *Years*. She ſerved the ſaid *Rebeccah* from that Time, in *St. Petrox* aforeſaid, until 17th *July* 1738: When the ſaid *Rebeccah Gregory*, by Indorſement on ſuch Indenture, dated that Day, *delivered up the ſaid Indenture, together with all her Right Intereſt and Term of Years then to come and unexpired*, as expreſſed in ſuch Indenture, *of the ſaid Apprentice*, to *Philip Foale* jun. of *Stoke Fleming*. And the ſaid *Ann Giles*, then of the Age of 14 Years or thereabout, by Indenture dated the ſame 17th *July* 1738, *did voluntarily bind herſelf Apprentice* to the ſaid *Philip Foale* (who is ſtill living) *to learn* HOUSEWIFERY BUSINESS *and ſuch other Buſineſs as he ſhould have to do*, and ſerve him after the Manner of an Apprentice from the Date thereof until the firſt Day of *November* 1744. And the ſaid *Ann Giles* ſerved the ſaid *Philip Foale*, by the Means aforeſaid, as an Apprentice, in *Stoke Fleming* aforeſaid, for ſeveral Years, and until about the firſt of *January* laſt; when ſhe intruded into the Pariſh of *St. Petrox*. And afterwards, to wit, on 9th of the ſame Month of *January* laſt, the ſaid Indenture of the 5th *September* 1733 was, AT *the General Quarter-Seſſions of the Peace* held in and for the ſaid Burrough

Burrough of *C. D. H.* and Pariſh of *Townſtall*, BY ORDER OF THE SAID COURT, *vacated and made void**. And the ſaid *Ann Giles*, being then chargeable to the ſaid Pariſh of *St. Petrox*, was then after removed, by Virtue of the ſaid Order, to *Stoke Fleming* aforeſaid. The Seſſions, being of Opinion "that the ſaid *Ann* "*Giles* did NOT *gain any Settlement by ſuch Living under ſuch In-* "*denture in Stoke Fleming* aforeſaid," doth vacate and make void the ſaid Order; and the ſame is, by their Order, made null and void.

ST. PETROX *and* STOKE FLEMING.

* *N. B.* The Fault of it was the Binding this Pariſh-*Girl* till 21 abſolutely without the *Alternative* of Time of *Marriage*. *V.* 43 *Eliz. c.* 2. *ſ.* 5.

On *Thurſday* 31ſt *January* laſt, a Motion was made by Mr. *Stracey*, to quaſh this Order of Seſſions, and affirm the original Order.

The Objection to the Order of Seſſions was, "That the firſt *Indenture* was *only* VOIDABLE; "*not* VOID." To prove this, the Caſe of *St. Peter's* and *St. Nicholas's* in *Ipſwich* in Lord *Hardwicke's* Time, *M.* 10 *G.* 2. *B. R.* was cited;† where the Indenture was *only for four Years*, and yet the Service under it was holden good; becauſe the Indenture was *not* abſolutely void, but *only* VOIDABLE *at the Election of the Parties*. This is a Caſe in Point.

† See it *Ante*, p. 91. No. 28.

RULE *to ſhew* CAUSE.

Mr. *Gundry* ſhewed Cauſe; and argued that this *Ann Giles's* Settlement was in *St. Petrox*.

The Queſtion will not turn upon the firſt Indenture's being only voidable, but not void; becauſe, though that ſhould be granted, yet the Settlement was in *St. Petrox*.

For, firſt, here was *no regular Aſſignment* of this firſt Indenture to *Philip Foale*; it being *only delivered up*, but *not aſſigned*. And the Term was not expired, when ſhe bound herſelf to *Philip Foale*. Beſides, a Contract *to learn Houſewifry of a Man* is a Contract that an *Infant can not make*; it being not for her Benefit. However, if ſhe was *legally* bound to *Philip Foale*, *he is obliged to maintain her*.

All the Service in *Stoke Fleming* is *under the ſecond Indenture*, which was *void*; becauſe the firſt was *ſubſiſting* when the ſecond was made. And the *vacating of the firſt Indenture is not warranted* by any Law: For the only Power that the Juſtices have to diſcharge Apprentices is under 5 *Eliz. c.* 4. *ſect.* 35. and that muſt be done by four Juſtices, and for Cauſes therein mentioned. Beſides, the *Quarter-Seſſions* of the *County have here no Power to diſcharge*; becauſe, this being in a *Burrough*, it muſt by the expreſs Words of the Act be done by the *head Officer* and three of his Brethren, &c. And

St. Petrox and Stoke Fleming.

Lord Chief Juſtice Lee obſerved that the Diſcharge muſt be *under the Hand and Seal* of the four Juſtices. *V.* the ſame 35th Section.

On the contrary it was urged by Mr. *Stracey*, That a Parol *Aſſignment* is ſufficient. It is, at leaſt, an *Aſſent:* And if the Service to *Philip Foale* was only *by the Aſſent* of the firſt Maſter, the Settlement will be in *Stoke Fleming*, where the Service was *done*.

Whether *Foale* was obliged to maintain her, or not; *that* was a Matter to be diſputed between him and the Pariſh of *Stoke Fleming:* But *St. Petrox* had certainly a *Right to remove her thither*.

The Court thought no Streſs was to be laid on the *vacating the firſt Indenture by the Seſſions*; becauſe it does not appear whether the Circumſtances which 5 *Eliz. c.* 4. *ſect.* 35. requires were *obſerved* or not. And they thought it not *void*, for Want of the Alternative of Marriage; though perhaps not obligatory upon the *Parties*. And though an Aſſignment of an Apprentice (except in *London*, by Cuſtom) cannot, ſtrictly, be made; yet as this Aſſignment was with the *Aſſent* of the Miſtreſs, the Service under it will be good for the Purpoſe of gaining a Settlement: For the *Servitude* continued *under the* first *Binding*. And though in the *Ipſwich* Caſe the Indenture was holden "not to be binding as between the *Par-*"*ties*;" yet it was holden to be neither *void* nor voidable by the *Pariſh as to the gaining a Settlement*. But even if there was *no* Authority in the Caſe, yet the Indenture ought *not* to be conſidered as *abſolutely void*, but *only voidable:* For it would be extremely hard that a poor Child, who had ſerved ten Years under an Indenture of Apprenticeſhip, ſhould *loſe the Benefit of her Settlement*, becauſe the Juſtice's Clerk who made the Indenture happened to be either ignorant or negligent.

Per Cur. unanimouſly—

Rule *made* absolute, *to* quash *the* Order *of* Seſſions, *and* affirm *the* Order of the two Juſtices.

Vide Ante, No. 5. and the ſeveral Caſes referred to at the End of it, pa. 16. and particularly No. 43.

Rex

Rex *v.* Inhabitants of Goodneſtone next Wingham. No. 85.

Monday 1ſt *July* 1745.

Abſence, BY CONSENT, for three Weeks before the *End* of the Year, will not defeat a Settlement by *Hiring* and *Service*.

V. Sir *John Strange* 1232. S. C. (there called *Goolaſton*, inſtead of *Goodneſtone*.)

TWO Juſtices made an Order for the Removal of *William Markham* the Elder and *Catharine* his Wife, and their ſix young Children, to wit, *Hannah*, *Anne*, *Catharine*, *William*, and *Thomas*, aged about ſeven, ſix, five, four, one and a half Years reſpectively and one other Daughter aged about five Weeks, not then baptized, from *St. Peter's the Apoſtle* in *Sandwich* to *Goodneſtone* next *Wingham* (both in *Kent:*) And upon Appeal, the Seſſions confirmed that Order.

Special Caſe—William Markham, being ſettled in *Goodneſtone*, unmarried, and without Child or Children, was hired by *John Wyborne* of *Northbourne* to ſerve him from *Michaelmas* 1731 for a Year, at 8 *l.* a Year; and lived with and ſerved his ſaid Maſter in *Northbourne* till within *three Weeks* of *Michaelmas-day* following; when he aſked his Maſter to give him *Leave* TO GO TO THE HERRING FISHERY; and his Maſter *conſented* that he ſhould go, *if he could get a Man to do his Work* to his (the Maſter's) Liking. *William Markham* accordingly *procured one German to do his Work*, and agreed to give him 5 *s.* a Week for the ſame, and paid him the ſaid Sum; and brought the ſaid *German* to his ſaid Maſter, and his *Maſter approved of him*; and *German* did *Wyborne's* Work in the ſaid Pariſh of *Northbourne* to the End of the Year. *Markham went to Sea*, and *returned at the End of the Herring Fiſhery*; which was about three Weeks after *Michaelmas:* And what he earned at the ſaid Fiſhery *was for his own Benefit*. When he went to Sea, his Maſter paid him, on his Requeſt, 3 *l.* Part of his Wages; but paid him no more at that Time, becauſe the ſaid *Markham* ſaid he had then no Occaſion for more Money; and when he returned, his ſaid Maſter paid him 5*l.* the *Reſidue of the Wages* left in his Hands. And then *Markham* made a *new Agreement* to ſerve the ſaid *Wyborne*; and *ſerved him about three Quarters of a Year* more, under the *ſecond* Contract.

And they ſtate that *William Markham* gained no other Settlement in *Northbourne*, ſave as aforeſaid; nor hath ſince gained any Settlement in any other Pariſh.

On the 9th of *February* laſt, a Motion was made to quaſh theſe Orders: For that the Settlement of *William Markham* appeared to be in *Northbourne*; ſince this Service for three Weeks was *equivalent to a perſonal Service*, upon the Maxim "*Qui facit per alium facit*

GOODNESTONE and ST. PETER'S.

"*per ſe.*" To prove which, the following Caſes were cited—*Littleton, ſect.* 157. 11 *H.* 4. 72. *b.* 24 *Edw.* 3. 32. *a. Co. Lit.* 107.

It came on again, on *Wedneſday* 22d *May* 1745; but was then adjourned.

It now came on again, and was argued by Mr. *Thomas Robinſon* and Mr. *Knowler*.

Mr. *Robinſon*, who was for the Motion to quaſh the Orders, ſtated the before-mentioned Caſes, and added two more, *viz. P.* 7 *G.* 1. *Rex* v. *Inhabitants of Iſlip*, and *P.* 17 *G.* 2. *Rex*, v. *Inhabitants of Beccles*. [*V. ante*, No. 78.]

Mr. *Knowler*, who ſhewed Cauſe againſt quaſhing theſe Orders, ſaid, The Queſtion turned upon the *Service* NOT* CONTINUING TO THE END *of the Year:* The Maſter and Servant *parted by Conſent*; and by this, the *Contract was* DISSOLVED.

*V. 8 & 9 W. 3. c. 30. ſect. 4.

In the *Iſlip* Caſe, the Servant only went to a Statute Fair; and the Contract was *not diſſolved*. [*V. ante*, pa. 71. and Sir *J. S.* 423.]

In the Caſe of *Rex* v. *The Inhabitants of Beccles*, *P.* 1744. 17 *G.* 2. *B. R.* the † Servant worked with another by the Conſent of his Maſter: But here was a PARTING *by Conſent*; and it was *known* "that the Fiſhery would *laſt till after Michaelmas.*"

† *V. Ante*, pa. 230.

Lord Chief Juſtice LEE—Here is a *Hiring* for a Year ſtated: The Queſtion is, Whether there is a SERVICE *for a Year*, too.

Now I cannot diſtinguiſh *this* Caſe from that of *Beccles* ‖. In which Caſe, the Abſence *with the Maſter's Conſent* was holden not to vitiate or diſſolve the Contract. So in the Caſe of *Iſlip*—It's plain the Court did not hold it to a *ſcrupulous Exactneſs*, when there was a Hiring for a Year; though there were, in that Caſe, *many Inſtances of Abſence*—Two were Sickneſs: and the laſt was, by a liberal Conſtruction, looked upon as a juſt Cauſe of going away; and therefore not a Diſſolution of the Contract.

‖ *Ante*, No. 78.

In the preſent Caſe, NO *Diſſolution* of the Contract is *ſtated:* And the Maſter *paid him his Wages* for the *whole* Year. Here was *Leave* given by the Maſter, three Weeks before *Michaelmas*, to be *abſent during the Herring Fiſhery:* And in the mean Time, he *provided one to do his Buſineſs*, and received his *whole Year's* Wages.

I am of Opinion that both Orders muſt be quaſhed.

THE THREE OTHER JUDGES concurred in the ſame Opinion, for the ſame Reaſons. And Mr. Juſtice *Wright* and Mr. Juſtice *Deniſon* thought this even a ſtronger Caſe than that of *Beccles*.

Mr.

Mr. Juſtice FOSTER added, That as the *Maſter had the Benefit* of the Contract during the *whole* Year, ſo ought the *Servant* to have it alſo. GOODNESTONE *and* ST. PETER'S.

Per Cur. unanimouſly.—

RULE *made* ABSOLUTE *to quaſh both* ORDERS.

See the Caſes referred to, at the End of No. 78, in Page 232.

Rex *v.* Inhabitants of Headcorn. No. 86.

Wedneſday 3d *July* 1745.

An acknowledgment in a CERTIFICATE, as to the *Parties*, is *concluſive* upon the Pariſh granting it. See Sir *John Strange* 1233, S. C. (though he calls the Pariſh "*Hedcome*;") and *Seſſions Caſes*, Ed. 1750, Vol. 2. pa. 391, No. 206, S. C.

TWO Juſtices made an Order for the Removal of *Richard Burden* and *Mary his Wife* and their four Children, *viz. John*, *Elizabeth*, *Hannah* and *Mary*, from *Headcorn* to *Maidſtone* (both in *Kent*.) Upon Appeal, the Seſſions confirm the Order as to *Richard Burden*; but quaſh ſo much of it as relates to the Settlement of the Wife and Children.

The Short Subſtance of the ſpecial Caſe was—That the Pariſh of *Maidſtone* had, on 20th *January* 1730, given a regular and proper CERTIFICATE, which had been properly delivered to *Headcorn*, *acknowledging* "the ſaid *Richard Burden* AND MARY HIS WIFE * to be In-"habitants legally ſettled in their Town:" But that, *in Fact*, *Richard Burden* was, *fifteen Years before* his Intermarriage with *her*, (which was on 7th *October* 1730,) *lawfully married to one Mary Lee*, who was living and appeared in Court at the Seſſions; though he *afterwards* married *Mary Broomhall* (the Perſon now removed as his Wife). But that the Churchwardens and Overſeers of *Maidſtone*, *at the Time* of granting the Certificate, BELIEVED *the ſaid Mary Broomhall* to be his *lawful* Wife; *not knowing*, or having ever heard, "*that* "*he had any* OTHER *Wife.*" It was further ſtated, That the lawful Wife *Mary Lee* and three Children by her were, after the ſaid Certificate was given, removed to *Maidſtone*, and maintained there.

* *N. B.* Her Maiden-name was *Broomhall.*

On *Wedneſday* 19th *June* laſt, a Motion was made, by Mr. *Gundry*, to quaſh ſo much of this Order of Seſſions as related to *Mary* the Wife and the four Children; and to affirm the original Order. They ſaid the Pariſh of *Maidſtone* was concluded and eſtopped, by their own Certificate, from ſaying "that *Mary Broomhall* was "*not* this Man's Wife."

A RULE was made to ſhew Cauſe; upon the Authority of *Rex* v. *The Inhabitants of New Windſor*, T. 5 G. 1. B. R†. and *Honiton*

† *V.* Sir *J. S.* 186.

HEADCORN and MAIDSTONE.

Honiton and *St. Mary Axe*, *M.* 9 *Ann. B. R.**. " that the Certifi-
" cate is concluſive upon the Pariſh giving it."

* *V.* 2 *Salk.* 535.

Upon ſhewing Cauſe, Yeſterday, the Counſel for *Maidſtone* (Sir *John Strange*, Mr. *Thomas Robinſon*, and Mr. *Otway*) denied that the Pariſh of *Maidſtone* was *eſtopped*; and cited ſome Caſes upon the Doctrine of *Eſtoppels*, which they ſaid were *odious* in Law: (*Co. Lit.* 45*b.* 47*b.* 19 *H.* 6. 44. 1 *Ro. Ab.* 862, 863.) And the Conſequence of ſuch an Eſtoppel would be, that the Pariſh of *Maidſtone* would have *two* of this Man's Wives to maintain at the ſame Time: Which would be contrary to Law and abſurd.

They argued that the Pariſh of *Maidſtone* was *not concluded* by their Certificate, any further than from denying " that he had a law-
" ful Wife *named* MARY." They did not controvert that *Mary Lee*, his *lawful* Wife, and his three Children by *her*, were ſettled in *Maidſtone*; becauſe the *Man* was confeſſedly ſettled there: But they ſaid it would be hard that they ſhould be charged with his *Courteſan* and the Children by *her* too.

The Certificate only acknowledges " that this Man *and Mary* " *his Wife* are Pariſhioners of *Maidſtone*." But what Reaſon is there to conſtrue the Certificate to mean *another* Woman, who was *not* his lawful Wife; when, in legal Conſtruction, the Certificate imports to be *applicable to Mary his* LAWFUL *Wife?* The Juſtices have determined MARY LEE to be the *lawful* Wife: And ſhe muſt, conſequently, be the Perſon *meant* by the Certificate; and every Body is eſtopped to ſay the contrary.

ADJOURNED.

And now the Counſel for *Headcorn* (Mr. *Gundry* and Mr. *Filmer*) proceeded, in Support of the Motion.

As to the Doctrine of *Eſtoppels*—If any Body is eſtopped, it is the Pariſh of *Maidſtone*. If there is an Eſtoppel upon an Eſtoppel, it ſets all at large. And if ſo, it muſt be taken upon the State of the Fact: And that is, " That *Maidſtone did not know or had ever heard* " *that the Man had any other Wife but Mary Broomhall.*" Therefore they *are concluded by their own Acknowledgment*, from denying *Mary Broomhall to be* his Wife. And it is concluſive againſt them, not only as to *Headcorn*, but as to *all* † *other* Pariſhes whatſoever. *Headcorn* received them on the Faith of a Certificate of *Facts* which it was *incumbent on the Pariſh of Maidſtone* to have *inquired* into. They have acknowledged the *Man himſelf* and alſo *this Mary* (*Mary Broomhall*) to be *their Pariſhioners*.

† *V.* 2 *Salk.* 535. accord.

Lord

HEADCORN and MAIDSTONE.

Lord Chief Juſtice LEE—It appears ſufficiently certain that *Mary* BROOMHALL *was the Woman certificated* under the Deſcription "of *Mary his Wife.*" And *ſhe was received under this Certificate*; and cohabited, and had Children, *under it*, at *Headcorn*.

Maidſtone's having receivedand p rovided for the *true and lawful* Wife can make no Difference: They were bound to that, by the Huſband's being their Pariſhioner. But it muſt depend on the CERTIFICATE *only*, "whether *Maidſtone* is bound to provide for "the *other* Woman and the Children *by her*."

Neither does the Queſtion turn upon the Doctrine of *Eſtoppels*, conſidered at large and at *Common Law*; but on the Certificate given under the *Act of Parliament*.

This *Certificate* is a moſt ſolemn Acknowledgment by the Pariſh who gave it, "that the Parties who are the Subject of it *are their* "*legally ſettled* Inhabitants:" 'Tis a Sort of an *Adjudication* "that "they are ſo." And ſo it was holden in the Caſe of * *Honiton* and St. *Mary Axe*. And when the Perſons certificated, or their Children, become actually chargeable, the Pariſh who gave the Certificate are *bound* to receive them. In that Caſe of *Honiton*, Judge *Powell* compared the Certificate to an Acknowledgment upon Record.

* 2 *Salk.* 535.

Now the Pariſh of *Maidſtone* have by this Certificate expreſsly acknowledged *Mary Broomhall* to be their legal Inhabitant; and the Pariſh of *Headcorn* were thereupon *bound to receive her*. Therefore when ſhe becomes chargeable, the Pariſh of *Maidſtone* are bound to provide for her and her Children by *Burden*. And ſo was the Determination in the Caſe of *New Windſor* and *White Waltham*.

THE WHOLE COURT agreed in Opinion with the Lord Chief Juſtice. They ſaid there was no Difference between this Caſe and that of *New Windſor*; except one that is not material, *viz.* that there, the Man and Woman never were married at all; but here, they were actually married, but not legally. In *that* Caſe it was holden that *White Waltham* was *not* at Liberty, *contrary to their own Certificate*, to *controvert* the certificated Perſons (*Pizzey* and *Anne*) being Man and Wife.

Now here the Certificate is in the ſame Manner as that was.

In the Caſe of † *Nympsfield* and *Woodcheſter*, *M.* 16 *G.* 2. *B. R.* *Nympsfield* having received a Man and Woman as Man and Wife, without appealing, it was holden "that they were not at Liberty af-"terwards to controvert the Marriage of the Father and Mother, in "a Queſtion about the Settlement of the Children." Indeed, the Certificate was not there attempted to be controverted as to the Man and

† *V. Ante*, No. 67, pa. 191.

HEADCORN and MAIDSTONE

and Woman; but only as to the Children: But the Settlement of the Children being derivative, was holden to be in the Pariſh which gave the Certificate to the Father and Mother, *as* Man and Wife.

In the preſent Caſe, *Maidſtone* ſay they were deceived: But it was their *own* Fault or Folly, if they were ſo; and *they* deceived *Headcorn:* Therefore *they* ought to ſuffer; and *not Headcorn.*

Wherefore, *per Cur.*—

RULE *made* ABSOLUTE, to *quaſh ſo much* of the Order of Seſſions, (which quaſhes the original Order of the two Juſtices) as relates to the ſaid *Mary* the Wife and four Children; and to *affirm the remaining* Part of the Order of Seſſions; and to AFFIRM the *original* Order of the two Juſtices.

Vide poſt. No. 228. S. P.

Michaelmas Term

19 Geo. 2. 1745.

No. 87. Rex. *v.* Inhabitants of Croſcombe.

Thurſday 7th *Nov.* 1745.

Hiring and *Service* for a Year, and a ſubſequent Continuance in the *ſame* Service, under the *original* Contract, will gain a Settlement, where the Service was

TWO Juſtices made an Order for the Removal of *Joſeph Garnſey* and *Mary* his Wife and their ſix Children, *viz. James, John, Joſeph, George, Robert* and *Sarah,* aged about twelve, ten, eight, ſix, four Years, and ſix Months, reſpectively, from *Croſcombe* to *St. Cuthbert's* the In-pariſh, *Wells,* (both in *Somerſetſhire:*) And, upon Appeal, the Seſſions quaſhed the Order of the two Juſtices.

Special Caſe—Joſeph Garnſey the Pauper was born in *Croſcombe,* and lived there with his Parents till about fifteen; then *hired* himſelf (being ſingle) to live with Dr. *Lucy,* as his Servant, *for a Year,* for 4 *l.* and a Livery; and accordingly *lived* with his Maſter, performed for the laſt 40 Days. *V.* Sir *John Strange* 1240. S. C.

in

in the *Liberty of St. Andrew, during that Year*, and had his Wages and Livery; and, *without coming to any new Agreement* at all, *continued* with his Master, in the Liberty, about a Quarter of a Year longer. Then the Master took a House above ten Pounds a Year in the Parish of *St. Cuthbert the In-parish, Wells*; and with his Family (*Joseph Garnsey* the Pauper being one) *removed out of the said Liberty* into that House in the Parish of *St. Cuthbert* the In-parish *Wells* aforesaid; where the said *Joseph Garnsey* the Pauper, the Father, CONTINUED TO LIVE WITH HIM *about* SIX *Months*, STILL UNDER THE FIRST CONTRACT, and was paid the same Wages, in Proportion to the Time. The Sessions, being of Opinion "that "the Place of the last legal Settlement of the said *Joseph Garnsey* "and his Wife and their six Children is in the *Liberty of St. An-* "*drew* aforesaid, by Virtue of such Living and Serving with the said "Dr. *Lucy* there, *for one Year* as aforesaid," doth order that the said recited Order be vacated set aside and discharged.

CROSCOMBE *and* ST. CUTHBERT'S.

On *Monday* 4th *June* 1744, (in *Trinity* Term 17 & 18 *G.* 2.) a Motion was made by Mr. *Gundry*, to quash this Order of Sessions; for that they were mistaken in Point of Law; the Service in *St. Cuthbert's* being a *Continuance of the first Contract*, and *under it*, and for six Months: The Servant's last legal Settlement must therefore be in *St. Cuthbert's*, where he served the last six Months. He cited several Cases: *Rex* v. *Inhabitants of Aynhoe*, *M.* 1 *G.* 2. *Brightwell* v. *West Hanning*, *H.* 1 *G.* 1. *Silverton* and *Ashton*, *Tr.* 12. *Ann.* (*V. Foley's Poor Laws*, pa. 210.) *Ivinghoe* and *Solebury*, *P.* 4 *G.* 1. *Rex* v. *Inhabitants of Ladock*, *P.* 15 *G.* 2. (*ante*, No. 64.) *West Stower* and *Fifehead*, *H.* 11 *G.* 2. (meaning *Rex* v. *Inhabitants of Fifehead Magdalen*, *ante* No. 37. pa. 116.)

RULE to shew Cause why the Order of Sessions should not be quashed, and the original Order affirmed.

Cause was now shewn: And it was urged, that this was *not* the *same* Service as the first Year's was: For that the first Contract was completed and executed on both Sides, and was *determined*. It had gained the Servant a Settlement in *St. Andrew's*. And there was *no new* Contract or Agreement at all: Nor is any Thing stated that can *destroy* the Settlement gained in *St. Andrew's* by serving a whole Year there.

Mr. *Gundry* replied, That it is the constant Practice, for Servants to *go on* upon the first Agreement, without any new one: And that

CROSCOMBE *and* St. CUTHBERT'S.

upon the Principles laid down by his Opponents, a Servant who had lived with his Maſter twenty Years in different Pariſhes, without any new Contract, muſt be ſettled in the Pariſh where his Maſter had lived in the *firſt* Year of his Service.

After it had been thus argued by Mr. *Gundry* for the Order of the two Juſtices, and Mr. *Henley* and Mr. *Gould* for the Order of Seſſions——

THE WHOLE COURT were unanimous, That as there was a *Hiring for a Year*, and a *Service for a Year*, and a CONTINUANCE *under the* SAME *Service*, it was ſufficient to gain a Settlement; and that ſuch Settlement muſt be in the Pariſh where it was performed *for the laſt forty Days*.

LEE *Lord Ch. Juſt.* obſerved that the Statute of 13 *C.* 2. *c.* 12. *ſect.* 1. authorizes the Juſtices (upon Complaint made by the Church-wardens or Overſeers within forty Days) to remove to that Pariſh which was the Pauper's laſt Place of Settlement for forty Days; either as a Native, Houſholder, Sojourner, Apprentice, or Servant: (For, *then*, Service for *forty Days* gained a Servant a Settlement.)

Then the 3 & 4 *W.* & *M.* *c.* 11. *ſect.* 7. enacted "that if any "unmarried Perſon, not having Child or Children, ſhall be lawfully "*hired* into any Pariſh or Town *for one Year*, &c, ſuch Service "ſhould gain a Settlement." But this Statute was doubtful upon "the *Service*; it being, that SUCH *Service* ſhould gain a Settlement, "though no Notice in Writing ſhould be delivered and publiſhed, "as that Act required."

The 8 & 9 *W.* 3. *c.* 30. *ſect.* 4. explains therefore the former Act of 3 & 4 *W.* & *M.* by requiring that it ſhall be not only a Hiring for a Year, but alſo *a Service for a Year*, and a *Continuance in the ſame* Service during the Year.——"That no ſuch Perſon ſo hired as "aforeſaid ſhall be adjudged or deemed to have a good Settlement in "any ſuch Pariſh or Townſhip, *unleſs* ſuch Perſon ſhall *continue* "*and abide in the ſame Service* during the Space of one whole "Year *."

* See *Foley's Poor Laws*, pa. 212, 213, 214. where this Act of Parliament, and the Hiſtory of it are well explained by L. C. Juſt. *Parker*, in the *Silverton* and *Aſhton* Caſe.

The two Conſiderations of a Settlement gained in this Way, are —The *Benefit to the Pariſh*, and the *Labour of the Perſon*.

Mr. *Henley* ſays that he had completely gained a Settlement in *St. Andrew's*; and "that it ſhall *not be deſtroyed* by what followed."

But I ſay, He *has deſtroyed* that Settlement *and gained a new* one, by what he has done ſince: for it is certainly the *ſame* Service; and the *laſt forty Days* of it *make* the Settlement. And by gaining a latter Settlement, he of Courſe *loſes* his former one.

His Lordſhip ſaid he could not diſtinguiſh it from the Caſes cited, * of a Hiring for a Year and a Service for a Year; which is holden to gain a Settlement, though the Service be *not under the ſame Hiring:* And he thought it quite indifferent in *what* PARISH the Service was; ſince it was the *ſame* SERVICE.

THE THREE OTHER JUDGES concurred, upon the ſame Principles.

THE COURT, therefore, being unanimous, the Rule was —that the

Order of the two Juſtices be AFFIRMED;
And *Order of Seſſions* QUASHED.

CROSCOMBE *and* ST. CUTHBERT'S.

* *V. Silverton* and *Aſhton, Tr.* 12 *Ann. B. R.* (*V. Seſ. Caſes* Ed. 1750, Vol. 1. No. 46. p. 44. and *Forteſcue* 308. and *Fol.* 210) *Rex* v. *Inhabitants of Ladock, P.* 15 *G.* 2. *B. R.* (*ante*, No. 64. pa. 179.)

V. Poſt. No. 98. *Rex* v. *Inhabitants of Wrinton* alias *Wrington, Mich.* 1748, 22 *G.* 2. and No. 147. *Rex* v. *Inhabitants of Caverſwall, Eaſter* Term 1758, 31 *G.* 2. See alſo *Poſt.* No. 175.—*Dougl.* 296. S. P.

Hilary Term

19 Geo. 2. 1745.

Rex *v.* Inhabitants of Bray. No. 88.

Monday 27th *Jan.* 1745.

The Son of a *Certificate*-man, born in the *certificated* Pariſh, is incapable of gaining a Settlement *there*, by *Hiring and Service*, *Wilſ. Rep.* 121. S. C.

TWO Juſtices made an Order for the Removal of *James Gould* and *Elizabeth* his Wife from *Bray* to *Shotteſbrooke* (both in *Berkſhire:*) And, upon Appeal, the Seſſions diſcharged that Order.

The Pauper was born in *Bray*; and being twenty Years of Age, was HIRED AND SERVED *there for a Year:* But he was the *Son of a* CERTIFICATE-*man*, who came into *Bray* with a Certificate from *Shotteſbrooke*; and he had gained *no other* Settlement.

On *Tueſday* 26th *Nov.* laſt, a Motion was made by Mr. *Ford*, to quaſh this Order of Seſſions; upon the Authority of the Caſe be-

Bray and Shottesbrooke, * *V. ante*, No. 65. pa. 182. *Rex* v. *Inhabitants of Sherborne.*

tween the Inhabitants of *Sherborne* * and *Thornford*, *P.* 15 *G.* 2. *B. R.* where it was determined "that the Children of Certificate-"persons, born in the Pariſh, could not gain a Settlement in it, *but* "by one of the *two* Methods preſcribed by 9 & 10 *W.* 3. *c.* 11."

RULE *to ſhew Cauſe.*

Sir *John Strange*, who now ſhewed Cauſe againſt quaſhing the Order of Seſſions, did not deny that this Queſtion depended on 9 & 10 *W.* 3. *c.* 11. But beſides the Qualifications particularly ſpecified in that Act, the Court has extended them by *Conſtruction*, and has let in Purchaſers, though they were Certificate-men.

This Son was not in Being, when the Father came from *Shotteſbrooke* to *Bray*; but was born afterwards: Therefore he is not ſtrictly within the Words of the Act, "*Coming* into a Pariſh by Certificate:" And being twenty Years of Age, he muſt not be conſidered as Part of his *Father's* Family and dependent upon *his* Settlement.

An Apprentice of a Certificate-man ſhall not, *as* being ſo, gain a Settlement: But if *aſſigned over*, he may acquire one.

The Counſel on the other Side (Mr *Ford* and Mr. *Hayes*) relied on the Caſe of *Sherborne* and *Thornford*, where it was holden "that "the Son was reſtrained to the *ſame* Methods of gaining a Settle-"ment as the *Father*; and *could not* gain a Settlement under a *Hi-"ring and Service for a Year*;" as a Caſe directly and abſolutely in Point to the preſent Caſe.

Mr. Juſt. WRIGHT and *Mr. Juſt.* DENISON ſaid, That Caſe was exactly in Point. There the Son was ſixteen Years old, and was born in *Sherborne*, the Pariſh to which his Father was certificated; and was hired and ſerved for a Year to *Francis Pope*, in *Sherborne*: And the Court were clear, that though the Pauper was born in the Pariſh, *after* his Father's coming thither by Certificate, yet he did *not* gain a Settlement by *Service*.

Mr. Juſtice FOSTER concurred, and ſaid it was ſo ſettled *upon good Reaſon*; becauſe, as the Son came under the *Advantage* of the Certificate, and was *not removable till actually* chargeable, he OUGHT *to be* BOUND *by the Terms of it*.

Per Cur. (*viz.* theſe three Judges, the Chief Juſtice being abſent) unanimouſly and clearly—

Order of Seſſions QUASHED:
Order of Two Juſtices AFFIRMED.

Vide Poſt. No. 112. S. P.

Eaſter

Eaſter Term

19 Geo. 2. 1746.

Rex *v.* Inhabitants of Oſgathorpe. No. 89.

Tueſday 22d *April* 1746.

TWO Juſtices made an * Order for the Removal of *Thomas Ward* and *Jane* his Wife and their ſix Children, *John*, *Sarah*, *Jane*, *Dorothy*, *Catharine* and *Thomas*, from *Diſeworth* to *Oſgathorpe*, (both in *Leiceſterſhire:*) And, upon Appeal, the Seſſions confirmed that Order.

An Order diſcharged *under different Circumſtances* is not final, even as between the contending Pariſhes.

It appeared upon the Face of this Order of Seſſions, and was expreſsly ſo ſtated, That the Pauper *Thomas Ward* was a CERTIFICATE-*man* from *Oſgathorpe* to *Diſeworth*; and it is therein ſtated that there *had been a* † FORMER *Order of Removal from* DISEWORTH *to* OSGATHORPE, BEFORE *the Paupers became* ACTUALLY *chargeable*; which Order had been appealed from, and had been ‖ diſcharged *generally* by an Order of Seſſions made upon ſuch Appeal, and the Pariſh of *Oſgathorpe* thereby *diſcharged* from the Paupers. And it ſtates, "that the *Certificate was* NOT *produced* at the Time "of ſuch Appeal." It further ſtates, that at the *Time* of making the *ſecond* Order of Removal, the Paupers *were become* ACTUALLY *chargeable* to the Pariſh of *Diſeworth*.

V. Sir *John Strange* 1256. S. C.

* *Note*—This original Order was dated 23d *Jan.* 1744: (which was in 18 *G.* 2.)

† *N. B.* This former Order bore date on 2d *December* 14 *G.* 2.

Upon the laſt Day of the laſt Term, a Motion was made by Mr. *Proctor*, to quaſh theſe two laſt Orders, and alſo the firſt original Order removing the Paupers from *Diſeworth* to *Oſgathorpe*; and to *affirm* the *firſt* Order of Seſſions, which quaſhed the *firſt* original Order.

‖ The Order of Seſſions for diſcharging it, was made in 14 *G.* 2.

The Principle upon which he grounded his Motion, was "That "the firſt Order of Seſſion which *diſcharged* the firſt original Or- "der, was FINAL between *theſe two* Pariſhes, and CONCLUDED the "Pariſh of *Diſeworth* from removing them *again* to *Oſgathorpe* "by a *ſecond* Order."

[*V. Salkeld* 492. *inter Swanſcomb* and *Shenfield* Pariſhes, and *Salk.* 524. *inter Harrow* and *Ryſlip*; and *ante*, p. 74.]

RULE

OSGATHORPE *and* DISEWORTH.

RULE to ſhew Cauſe why the original Order made 23 *Jan.* 1744, for removing *Thomas Ward*, &c, from *Diſeworth* to *Oſgathorpe*, and alſo the Order of Seſſions confirming it ſhould not be quaſhed; and alſo why the Order of Seſſions made 14 *G.* 2. for quaſhing the original Order made on 2d *December* then preceding, for removing all the above-mentioned Perſons except *Thomas* the Child (who was then dead) from *Diſeworth* to *Oſgathorpe*, ſhould not be affirmed; and the laſt-mentioned Order [meaning the original Order of 2d *December*] quaſhed.

The Queſtion was "Whether this firſt Order of Seſſions, being "*between the* SAME *Pariſhes*, *was* CONCLUSIVE upon the Pariſh "of *Diſeworth* or not."

The Counſel for *Diſeworth*, (Mr. *Gundry*, Mr. *Ford*, and Mr. *Wilmot*) who now ſhewed Cauſe, inſiſted "that it was NOT;" ſince the *Circumſtances* were *not the ſame*. They agreed, that it would have been concluſive had the Circumſtances remained the ſame. But here, the Circumſtances were quite altered: For the former Removal was *not* as *Certificate*-perſons, they not being *actually* chargeable; but the ſecond Removal was *as* Certificate-perſons *actually become* chargeable. So that this is a *future Right* of Removal *ſubſequently* accrued to *Diſeworth*, and which has *ariſen* to them ſince the former Removal, and *did not exiſt* at *that Time*. The Juſtices had no Juriſdiction to remove Certificate-perſons, *before* they became chargeable: Their Act was null and void. But as ſoon as they become *actually* chargeable, they were removeable.

On the other Side it was urged, That *Diſeworth was concluded* by this *general* Order of Diſcharge of *Oſgathorpe*, made between the *ſame* two Pariſhes: Which general Order of Diſcharge muſt be taken to have been a Diſcharge *upon the* MERITS.

If *Oſgathorpe* had not appealed from the firſt Order, there is no Doubt but that *they* would have been concluded. They did appeal: And the Order was diſcharged. The Court cannot enter into any Facts contrary to the Adjudication of the Seſſions.

Lord Chief Juſtice LEE—Certainly, an Order of Seſſions *diſcharging* an Order of two Juſtices is *final* between the *ſame* two Pariſhes; and an Order of Seſſions *confirming* an Order of two Juſtices is *final to all the World**; where the *Circumſtances* REMAIN the SAME. But this Rule does not hold, where they are *not* the ſame.

* *Ante*, No. 6. *Poſt*. No. 127. 135.

We muſt give our Judgments upon the Facts ſtated in the preſent ſpecial Order of Seſſions. Now this laſt Order of Seſſions ſtates "that

" that he did come by Certificate from *Oſgathorpe* to *Diſeworth*, " and that they *are now become actually* chargeable."

If therefore the State of the Caſe *now returned* was *not* the former Caſe, then the firſt Seſſions have not determined any Thing about the *preſent* Caſe.

It appears to me plainly, that the *firſt* Order was a Removal of theſe Paupers as *likely* to become chargeable; the *latter*, as Perſons *under a Certificate*, ACTUALLY *become chargeable.*

Indeed, we are not at Liberty to *preſume* Rights accruing ſubſequently, *unleſs* they do appear: But here it *does appear* the Right *did* plainly accrue ſubſequently, by their *actually* becoming chargeable.

THE OTHER THREE JUDGES concurred, for the ſame Reaſons. They held the two Seſſions-Orders to be very conſiſtent each with the other. The former Seſſions might *diſcharge* the former original Order, becauſe the Paupers were *not* actually chargeable: And the latter Seſſions might *confirm* the latter original Order, becauſe they *were become* actually chargeable.

Per Cur. unanimouſly—

The RULE *obtained by Mr.* Proctor *was* DISCHARGED: And

The original Order of the Two Juſtices *bearing Date the* 23*d* January 1744, *and the Order of* Seſſions *made in Confirmation of it,* AFFIRMED.

Trinity

Trinity Term

19 & 20 Geo. 2. 1746.

No. 90. **Rex *v.* Inhabitants of Wyke.**

Tueſday 17th *June* 1746.

A BASTARD is ſettled where *born*, though in a *certificated* Pariſh.

V. Seſſions Ca. Ed. 1750, Vol. 2. pa. 389, No. 205. S. C.

TWO Juſtices made an Order for the Removal of *John Catton* otherwiſe *Speight*, and *Alice* his Wife, and *Martha*, *Mary*, *Sarah* and *George* their Children from *Wyke* to *Hipperholm cum Brighouſe* (both in the Weſt Riding of *Yorkſhire*:) And, upon Appeal, the Seſſions quaſhed that Order.

Caſe—*Sarah Catton*, the Mother of *John Catton* otherwiſe *Speight*, came, on 20th *March* 1715, from *Shelfe* to *Hipperholm cum Brighouſe*, by *Certificate*, being THEN PREGNANT *with a Baſtard-child* (the ſaid *John Catton* otherwiſe *Speight*;) and was afterwards, in *April* following, delivered of him at *Hipperholm*. The Seſſions, being of Opinion "that the ſaid *John Catton*, the Pauper, "*by Reaſon of the ſaid* CERTIFICATE, did *not* gain a Settlement "in the ſaid Townſhip of *Hipperholm cum Brighouſe*, WHERE HE "WAS BORN A BASTARD-CHILD as aforeſaid," diſcharge the original Order. The Certificate itſelf was returned up, and undertakes that *Shelfe* ſhall provide for her "*and her Child*," whenever they ſhould become chargeable, *&c.*

On *Monday* the 2d of this Month, a Motion was made by Mr. *Fawkes*, to quaſh this Order of Seſſions, upon this Objection, "That "the Juſtices at Seſſions had *miſtaken* the Law." In Support whereof, he cited the Caſe of *Rex* v. *The Inhabitants of Helton**, *Tr.* 16 *G.* 2. *B. R.*

**V. Ante*, No. 66.

RULE *to ſhew Cauſe.*

The Counſel who ſhewed Cauſe (Sir *Richard Lloyd* and Mr. *Weller*) inſiſted that *Shelfe* was the laſt legal Place of Settlement of the Pauper. And they argued that this Caſe is clearly *diſtinguiſhable* from that of *Helton* and *Lidlinch*. For here the Woman is ſtated to be *then pregnant* with a Baſtard-child; and the Certificate EXPRESSLY

PRESSLY UNDERTAKES *to provide for her and* HER CHILD: So that *Shelfe* plainly had *this very Child* in Contemplation; no other Child being named or hinted at, and there being (as they ſaid) a proper Deſignation of *this* Child.

WYKE *and* HIPPERHOLME *cum* BRIGHOUSE.

On the other Side, it was urged that, by the expreſs Reſolution in the Caſe of *Lidlinch*, " a *Baſtard of a Certificate-woman* is ſet-" tled where born; and Fraud ſhall *never be preſumed*, where it is " *not ſtated*."

The Queſtion therefore is " Whether the *unborn Baſtard* is to be conſidered as certificated.

They acknowledged a Certificate to be concluſive againſt the Pariſh who gives it: But *that*, they ſaid, is *only* in ſuch Points as are *included* in the Certificate. *This* Certificate undertaking to provide for her *and her Child* muſt mean a Child in *Being*. If ſhe had *no other* Child; they ſhould have *ſtated* the Matter *ſpecially*.

Lord Chief Juſtice LEE and *Mr. Juſtice* WRIGHT agreed that *they muſt take the Child* referred to by the Certificate *to be a* LEGITIMATE *Child* THEN IN BEING.

And *Mr. Juſtice* FOSTER obſerved, (to which Obſervation the other two agreed,) That it did not at all appear that the Pariſh who gave the Certificate KNEW " *that the Woman was then with* " *Child*." And he added that there were many Inſtances where Women were near their Time *without* being *known* to be ſo.

The Counſel for *Hipperholme* propoſed that it ſhould go back to the Seſſions to be more fully ſtated. But their Opponents ſaid, and the Court agreed, " that could not be done without Conſent." And the Counſel for *Wyke* refuſing to Conſent—

THE COURT were of Opinion that the Rule muſt be made abſolute.

Vide, Poſt. No. 201. *Rex. v. Inhabitants of Ipſley.*

ORDER of SESSIONS *quaſhed:*
ORIGINAL ORDER *affirmed.*

Michaelmas Term 20 G. 2. 1746.

No Determination.

Hilary Term 20 Geo. 2. 1746.

No Determination.

Eaſter Term

20 Geo. 2. 1747.

No. 91. Rex *v.* Inhabitants of Clapham.

Monday 11th *May* 1747.

An *Apprentice* may gain a Settlement, by ſerving 40 Days in a *different* Pariſh, with the *Conſent* of his *ſecond* Maſter. 1 *Wilſ. Rep.* 158. S. C.

TWO Juſtices made an Order for the Removal of *Michael Wilſon, Margaret* his Wife, and *Jane* their Daughter from *Auſtwick* to *Clapham* (both in the Weſt Riding of *Yorkſhire*:) And, upon Appeal, the Seſſions confirmed that Order.

Caſe—The Pauper was bound a Pariſh-apprentice, by the Aſſent of two Juſtices of the Peace, to one *Thomas Jackſon* of *Auſtwick*, Tenant to the Rev. Mr. *Jackſon* of *Clapham*, who had covenanted to indemnify his Tenant againſt all Pariſh-charges. *Thomas Jackſon* carried him to his *Landlord*, together with the Indenture, who *accepted, received and provided for him*. He deſired the Mother to provide for the Boy; who did ſo, for three Years, in *Auſtwick*; and the Rev. Mr. *Jackſon* paid her 20*s.* a Year. Then he lived *with him in Clapham eight Weeks*; and then run away to his Mother, and remained a Quarter of a Year in *Auſtwick*; and the Rev. Mr. *Jackſon* conſented to his being there. Then the Pauper was placed *with his Brother*, a Maſon in *Auſtwick*, as an *Apprentice*, by the *Rev. Mr. Jackſon* who gave him a new Suit of Cloaths: And he *ſerved his Brother* *, *as an Apprentice*, a *Twelvemonth* or two, in *Auſtwick*; who *took him as an Apprentice*, and *quitted the Rev. Mr. Jackſon of him*. But the *Repreſentatives* of the *firſt* Maſter (who

* It is not ſtated expreſsly "that the Pauper ſerved his Brother, the Maſon, UNDER *the Indenture*."

was then dead) *knew nothing of this, nor ever assented* to it; nor any Thing of his living with his Mother. CLAPHAM and AUSTWICK.

On *Saturday* 31st *Jan.* last, a Motion was made by Mr. *Poole* and Sir *John Strange*, to quash these Orders. They cited *Rex* v. *Inhabitants of East Bridgeford*, *ante* No. 43, pa. 133; and *Rex* v. *Inhabitants of St. Petrox*, No. 84; and *St. George's Hanover-Square* and *St. James's Westminster*, which see *ante*, No. 5, pa. 12.

Upon shewing Cause now, it was insisted by Mr. *Clayton*, on Behalf of the Parish of *Austwick*, that this Service of the *third* Master in *Austwick* could not be considered as a Service under an *Assignment*; nor as a Service *under the Indenture*; for want of the *Consent* of the *first* Master.

On the contrary, it was insisted by Sir *John Strange* and Mr. *Poole*, on Behalf of the Parish of *Clapham*, that this Service *must* be considered as UNDER *the Indenture*; the first parol Assignment being, to *this* Purpose, good. *Wilson* was the *legal* Apprentice of *Thomas Jackson*; and the *equitable* Apprentice of the *Rev.* Mr. *Jackson*: A *legal* Assignment is not necessary. And this is a sufficient Service under the *first* Indenture.

To this it was replied by Mr. *Clayton*, that he gained his *last* legal Settlement at *Clapham*, by the eight Weeks Service. The Agreement with the Mason is *not* an *Assignment*; but an Attempt of a *new Binding*, whilst the first Indenture was *subsisting*: Which, therefore, is not good.

Lord Chief Justice LEE—The Act * of Parliament only requires a *Binding by Indenture*; and gives a Settlement where the last forty Days are served. Here is a *Binding by Indenture*; (though the Term is not stated:) And the first Master *delivers over* the Apprentice and Indenture to his Landlord, who receives him. This, therefore, must be looked upon as receiving him *under the Terms of the Indenture*.

* 3 & 4 *W. & M. c.* 11. *s.* 8. See the Words of it, *ante*, pa. 16, in the Margin.

IF there had been no Inhabitancy elsewhere, *after* the Boy's living eight Weeks with the Rev. Mr. *Jackson* at *Clapham*, the Settlement had been *there*. But a Settlement is fixed at *Austwick*, by the Boy's living *there a Quarter of a Year*, WITH THE CONSENT of his Master. For this is living there UNDER *the original Binding*; as *no Dissent* of the *first* Master is *stated*.

Then the Agreement with the Mason is *not* stated to be a *new Binding*. The *first* Master *delivered over* ALL *his Right* and the *Indenture*, to the Rev. Mr. *Jackson*: And it is *not* necessary to state any ASSENT from *him*.

CLAPHAM *and* AUSTWICK.

The Case of *East Bridgeford* * is in Point.

However, there is no Ground for the Distinction "That a *second* "Master cannot assign to a *Third*;" that is, *so far* as to *gain a Settlement by the Service under it.*

Mr. Justice DENISON concurred that the Service to the Mason was a Service *under the original Binding*; and that no *actual* Consent of the *first* Master was necessary.

This has been called a *new Binding* to the Mason. But, neither could a *new Contract* be made whilst the former subsisted, and the *original one dissolved*; nor does such a Thing seem to be *intended.* Therefore this is a Service under the *first* Binding: And the Orders ought to be quashed.

Mr. Justice FOSTER was of the same Opinion "That the "Orders ought to be quashed."

Per Cur—

Both ORDERS QUASHED.

* *V. Ante*, No. 43. pa. 133. *Tr.* 13 *G.* 2.

V. Post. No 95. *Rex* v. *Inhabitants of St. Mary Kallendars in Winchester, Trin.* 1748. 21 & 22 *G.* 2. and the Cases referred to at the Bottom of Page 16, *particularly*, No. 133. 174. 186. 250. See also *Dougl.* 69.

Trinity Term 21 Geo. 2. 1747.

No Determination upon any Settlement-Case, within this Term.

☞ *Note*—SIR JOHN STRANGE's *Reports* end with this *Trinity* Term 1747, 21 *Geo.* 2. (inclusive.)

AND

I believe there are no Cases later or even so late as this Term reported in either Volume of the SESSIONS CASES published in 1750: But it is not easy to pronounce with Certainty on these last; because the Cases are placed without Order or Regularity, both in the Body of the Book, and in the Index of the Names of the Cases. I do not observe any Cases, in either Volume, subsequent to *Trinity* 1746, 19 & 20 *G.* 2.

Michaelmas Term 21 Geo. 2. 1747.

No Determination upon any Settlement-Caſe within this Term.

Hilary Term

21 Geo. 2. 1747.

Rex *v.* Inhabitants of Silton.

No. 29.

TWO Juſtices made an Order for the Removal of *Milbourn*, *Amy* his Wife, *John*, *Ann*, *Mary*, *James* and *Priſcilla* their Children, from *Wincanton* in *Somerſetſhire* to *Silton* in the ſame County: And, upon Appeal, the Seſſions confirmed that Order.

Tueſday 9th *Feb.* 1747.

The Son of a *Certificate*-Man, born in the *certificated* Pariſh, is not reſtrained from gaining a Settlement by *Apprenticeſhip* elſewhere. 1 *Wilſ. Rep.* 184. S. C.

The ſhort State of the Caſe was this—*Giles* and *Priſcilla*, the Father and Mother of *John* the Pauper, came to *Wincanton* with a CERTIFICATE *from Silton*. *John Milbourn* was afterwards *born in Wincanton*; and was at 12 Years of Age *bound out by the Pariſh of Silton* to *Michael Hannam* of HORSINGTON, Taylor, for eight Years; and *ſerved him* THERE; and has gained no Settlement ſince: And though the Indentures were not ſtamped in Time, yet they *were* duly ſtamped *&c.* and the Duty paid, by Virtue of an Act to *enlarge* the Time for doing it. And the Seſſions held "that *John Milbourn* "did *not* gain a Settlement in HORSINGTON *by his ſerving ſuch Ap-* "*prenticeſhip there*;" and therefore confirmed the original Order."

Mr. GUNDRY and Mr. *Gould* moved, on *Friday* 12 *November* laſt, to quaſh theſe Orders; and ſaid this was a *new* Queſtion upon the *Certificate-act—"Whether the SON *of a Certificate-perſon*, born "in

* 9 & 10 W. 3. c. 11.

SILTON *and* WINCANTON.

" in the Pariſh to which his *Father* came by Certificate, and bound " APPRENTICE and ſerving an *Apprenticeſhip* to a Maſter in *a* " THIRD *Pariſh*, gains a Settlement in the THIRD Pariſh, by ſuch " *Apprenticeſhip*."

* *Ante*, No. 65. *Rex* v. *Inhabitants of Sherborne.*

They cited the Caſe between the Pariſhes of * *Thornford* and *Sherborne*, *P.* 15 *G.* 2. *B. R.* where Mr. Juſtice *Deniſon* ſaid " there " could be no Doubt but that as to OTHER Pariſhes, the *Children* " of Certificate-perſons would *not* be under the Reſtraint of the Cer- " tificate;" and all the Reſt of the Court *agreed* with him.

So here, *this* Pauper was a Perſon *at large*, AS *to* EVERY OTHER *Pariſh* except *Wincanton*, to whom the Certificate was directed and delivered.

And they alſo argued from the Caſe of *The King* againſt *The Inhabitants of Petham*, *ante*, No. 54. See *ante*, pa. 156, and Sir *John Strange* 1147, (at the End of the Caſe.)

A Rule was then made to ſhew Cauſe; which was now

Made ABSOLUTE, *to* QUASH *both Orders.*

See alſo *Poſt.* No. 125. 136,7.

V. Poſt. No. 122. *Rex* v. *Inhabitants of High and Low Biſhopſide*, 7th *June* 1755; and *Rex* v. *Inhabitants of Horſley*, Poſt. No. 123. 11th *June* 1755; Both of them in Point with the preſent Determination.

No. 93. Rex *v.* Inhabitants of Bugden.

Thurſday 11th *Feb.* 1747.

TWO Juſtices made an Order for the Removal of *Thomas Green* and *Mary* his Wife, and *Rachel*, *Mary*, *John*, *Elizabeth* and *Thomas*, their Children, from *Ampthill* in *Bedfordſhire* to *Bugden* in *Huntingdonſhire:* And, upon Appeal, the Seſſions confirmed that Order.

A *Son*, emancipated from his *Father's* Family, cannot gain a *new* DERIVATIVE Settlement. 1 *Wilſ. Rep.* 183. S. C.

Special Caſe——In 1729, *John Green*, the *Father* of *Thomas* the Pauper, came by CERTIFICATE properly atteſted *&c*, with his Wife and four Children (of whom this *Thomas* the Pauper was one) from *Royſton* to *Ampthill*. They remained at *Ampthill*, under the Certificate, till *Thomas* the Pauper came of Age: And *Thomas* continued with his ſaid Father at *Ampthill* till his Age of twenty-one. Then, *Thomas* the Pauper, *being more than twenty-one* Years of Age, *married in Ampthill* and *left his Father*, and *lived there with his Wife and Children, diſtinct from his Father*, till removed by this Order; and there had the five Children born, which are removed by the Order. *Three Years after* the Marriage of *Thomas*, *John the Father*

Father removed from *Ampthill* to *Bugden*; and *there hired a Tenement of* 10*l. a Year*, and was *rated and paid* to the Poor's Rate at *Bugden*: But neither *Thomas the Pauper*, nor his Wife, nor any of his Children *ever lived there*. It is alſo ſtated that *Thomas* the Pauper had not, from his Birth, gained any Settlement for himſelf by any Act of his own, as far as appears to the Court: Nor have his five Children done any Act whereby to gain any Settlement for themſelves. BUGDEN and AMPTHILL.

N. B. The Certificate is expreſs, "that *Royſton* will own *J. G.* and his Wife and four Children, *unleſs* they or any of "them ſhall gain in Law a Settlement according to the "Statutes of this Realm, that ſhall juſtify a *legal* Settlement in the ſaid Pariſh of *Ampthill*."

On *Wedneſday* 27th *January* laſt a Motion was made by Sir *Richard Lloyd*, to quaſh theſe Orders: And he cited and relied upon the Caſe of *St. Michael's Coſlany in Norwich* and *St. Matthew's in Ipſwich*, *Tr.* 1729, 2 & 3 *G.* 2. as a Caſe in Point. 2 Seſſ. Caſ. 129. Str. 831. S. C.

A RULE was thereupon made, to ſhew Cauſe why they ſhould not be quaſhed.

Upon ſhewing Cauſe now, it was urged by the Recorder of *London* (*Stracey*) that the *laſt* Settlement of the *Father* would be the legal Settlement of the *Son*, *unleſs* the Son had gained a new Settlement of his *own*.

On the other Hand, it was argued by Sir *Richard Lloyd*, that as the Son *did not live* with his Father at *Bugden*, he could not gain any Settlement *there*; being *no Part of his Family*: And the rather, becauſe he had an *independent and diſtinct Family* of his *own* at *another* Place. And the Caſe of *Rex* v. *The Inhabitants of St. Michael's Coſlany in Norwich*, *Tr.* 1729, 2 & 3 *G.* 2. *B. R.* was urged by him, as deciſive.

AND of *this* Opinion was the COURT.

Lord Chief Juſtice LEE—It was determined in that Caſe, "that where a *Son marries*, and *leaves his Father's Family*, and *lives* "*by himſelf*; and *after this*, the Father gains a new Settlement in "*another* (a third) Pariſh; the *Son ſhall* NOT *follow the Father* in this "*new* Settlement, thus *afterwards* gained by the Father:" Which is directly the preſent Caſe.

Mr. Juſtice WRIGHT—The Son, by Virtue of his Marriage, becomes the *Head of his* OWN *Family*: Which is to be conſidered as an *independent* Family. And it is a conſtant Rule, in all Orders of Removal,

BUGDEN and AMPTHILL.

Removal, to ſet forth the *Ages* of the Children, that it may appear to the Court, whether or no they were of *ſuch* an Age as to be *capable of gaining a Settlement of their own, independent of their Father's.*

Mr. Juſtice DENISON—This *ſubſequent* Settlement gained by the Father *can not* communicate a Settlement to the *Son* who *never reſided in Bugden* with his Father, but continued in the Pariſh of *Ampthill* where his Father lived before. And the Caſe cited is in Point.

The Pauper *ceaſed* to be Part of his *Father's* Family, upon his *marrying and living ſeparate and diſtinct* from his Father.

Mr. Juſtice FOSTER was of the ſame Opinion.

Vide Poſt. No. 197. S. P. and ſee alſo *Poſt.* No. 251.

Per Cur. unanimouſly—

Both ORDERS QUASHED.

Eaſter Term

21 Geo. 2. 1748.

No. 94.

Rex *v.* Inhabitants of Stratton.

Tueſday 3d. *May* 1748. A *Parol* Binding, without an *Indenture*, will not gain a Settlement by APPRENTICESHIP.

TWO Juſtices made an Order for the Removal of *Stephen Pethick* and *Mary* his Wife; and *John*, *Elizabeth* and *Mary* their Children, from *Llewannick* in *Cornwall* to *Stratton* in the ſame County: And, upon Appeal, the Seſſions confirmed that Order.

Special Caſe—*Stephen Pethick*, the Pauper, is of the Age of ſixty-five Years, and was born in the Pariſh of *Whitſtone* in the ſaid County; where he lived till he attained the Age of fourteen Years; when his Mother (then a Widow) put him into the ſaid Pariſh of *Stratton*, and placed him there as an Apprentice with his Brother in Law *John Petherick*, by Trade a Cordwainer, for ſix Years, to learn the ſaid Trade: But at the Time of placing him as aforeſaid, *no Indenture*

denture of Apprenticeſhip was executed. In Conſideration whereof, his ſaid Mother agreed to pay the ſaid *John Petherick* 8 *l. viz.* 4 *l.* in Hand, and 4 *l.* more at the End of three years; and the ſaid *John Petherick* agreed and was to find the ſaid *Stephen Pethick*, Meat, Drink, Waſhing and Lodging during the ſaid ſix Years; and the ſaid Mother agreed and was to provide the ſaid *Stephen Pethick* Cloaths during the ſaid Term. That the ſaid *Stephen Pethick* accordingly lived with and ſerved the ſaid *John Petherick* in the ſaid Pariſh of *Stratton*, as an Apprentice, for the ſaid Term of ſix Years: During which Time he was provided with Meat Drink Waſhing and Lodging by the ſaid *John Petherick*; and the ſaid Mother found him Cloaths, and paid the ſaid *J. P.* the ſaid 8 *l.* purſuant to the ſaid Agreement. That the ſaid *Stephen Pethick* believes that in or about the laſt Year of the ſaid Term, one Part of an Indenture was *prepared*, in order to bind him an Apprentice to the ſaid *J. P.* purſuant to the ſaid Contract or Agreement: But he *does not remember* that he EXECUTED the ſaid Part; or that it was executed by his Mother and the ſaid *John Petherick* or either of them; nor what is become of the ſaid one Part. Whereupon the Seſſions confirm the ſaid original Order, upon the Merits; and order the Pariſh of *Stratton* to pay to the Pariſh of *Llewannick* 1 *l.* 6 *s.* 8 *d.* for their Coſts upon the Appeal.

On *Wedneſday* 10th *Feb.* laſt a motion was made by Mr. Serjeant *Belfield* to quaſh theſe orders; upon this Objection "That this does "not amount to SUCH *a Binding* as will gain a Settlement, there "being NO INDENTURE *duly executed.*"

He cited the Caſe of *Rex* v. *The Inhabitants of Cheſterfield*, 5 *Mod.* 328. and 2 *Salk.* 478. S. C. and *Carthew* 400. S. C. where *Jerriſon*, Foot-boy to Sir *Paul Jenkinſon*, was put out by Sir *Paul* to a Barber in *Cheſterfield* for a Year, to learn to ſhave; and the Barber had 5 *l.* from Sir *Paul*, and was to have the Benefit of the Boy's Work; and the Boy ſerved the Year: It was adjudged to gain him no Settlement in *Cheſterfield*.

N. B. Salkeld and *Carthew* (the latter expreſsly) conſider this upon the Foot of a *Hiring* and Service. Indeed the Margin of *Salkeld* is "Covenant between the Maſter and a third "Perſon, the Servant not being Party, makes no Appren-"ticeſhip." In 5 *Mod.* 329. it is ſaid, by the Counſel in arguing, "That if this ſhould amount to a Contract be-

STRATTON and LLEWANNICK.

" tween them, it must be *as an Apprentice*; which *can not* " *be:* Because *not by Indenture*, and therefore *void*." But the *Determination* of the Case did not turn upon this Point.

THE COURT seemed to think this Exception too strong to be answered; and made a Rule to shew Cause why the Orders should not be quashed. Which Rule was now, upon the Motion of Serjeant *Belfield*,

Made ABSOLUTE (*without Defence.*)

BOTH ORDERS *quashed.*

Vide Post. No. 102. 104. 173. 203. 227. 262. S. P. But see the *statute*, 31 G. 2. c. 11.

Trinity Term

21 & 22 Geo. 2. 1748.

No. 95. Rex *v.* Inhabitants of St. Mary Kallendar in Wincheſter.

Saturday 11th *June* 1748.

Apprenticeſhip diſſolved, by *exchanging* the Indentures, between the *Maſter* and the *Apprentice's Father*, with the *Conſent* of the *Apprentice*. And ſerving a *ſecond* Maſter, under a *new* and *different* Contract, without the *Conſent* of the *firſt* Maſter, will not gain a Settlement.

TWO Juſtices made an Order for the Removal of *John Miles* and *Ann* his Wife, with *Ann*, *John*, *Sarah*, *Elizabeth* and *Richard* their five Children, from *St. Mary Kallendar's* in *Wincheſter* to *St. Michael's* near *Wincheſter*: And, upon Appeal, the Seſſions quaſhed that Order.

Caſe——*John Miles*, the Pauper, twenty-ſix Years ago, was bound by Indenture an *Apprentice*, for ſeven Years, to *John Gregory* of St. *Michael's* Pariſh; and, under that Indenture, lived with the ſaid *John Gregory*, and *ſerved in St. Michael's* for five Years; and, at the End of the five Years, *left his ſaid Maſter*; and the *Indentures were exchanged* between the Maſter and the Apprentice's Father, by *Conſent of the Apprentice*. And about one Year afterwards, the Father of the ſaid *John Miles contracted* with *William Stockdale* of *Twyford* for *binding* the ſaid *John Miles* Apprentice

tice to the ſaid *William Stockdale for four Years*; and in Conſequence of that Agreement, the ſaid *J. M.* went to the ſaid *W. S.* on Trial, and *lived* with him in *Twyford* for *one Year and three Quarters*: But *no Indenture was executed*, nor any *other* Agreement made. And that while the ſaid *John Miles*, lived with the ſaid *W. S. John Gregory, his former Maſter, lived within four Miles of Twyford, and knew of his being in the Service of the ſaid W. S.* But *no other Proof was made* "*that the ſaid J. G.* CONSENTED OR AGREED to the "ſaid Agreement between the ſaid *John Miles's* Father and the "ſaid *William Stockdale.*" St. Mary Kallendar and St. Michael.

On *Friday* 20th *May* laſt a Motion was made by Mr. *Stanyford*, to quaſh this Order of Seſſions: For that the legal Settlement of the Paupers, on this caſe ſtated, is in *St. Michael's*. In ſupport whereof, he cited a Caſe between the Inhabitants of *Buckington* and *St. Michael, Sebington*, 2 Lord *Raymond* 1352.

Sir *John Strange*, who now ſhewed Cauſe, endeavoured to put it upon the Foot of a *Continuation of the old Apprenticeſhip*, and a *Conſent* of the original Maſter. For Sir *John* admitted his Conſent to be neceſſary; and attempted to ſhew that the State of the Caſe *implied* his Conſent.

On the other Side it was inſiſted, by Mr. *Stanyford* and Mr. *Henley*, that the *Exchange of the Indentures was a Cancelling*, an *Annihilation*, an *entire Diſcharge* of them to all Intents and Purpoſes. And if ſo, there is an End of the Queſtion: For then there could be *no Service* UNDER them, *after* ſuch Exchange.

However, ſuppoſing the Indentures ſtill to ſubſiſt; yet this is *no Continuation of the original Service*. On the contrary, it is quite a *new* Contract, and a quite *different* one.

AND of *this* Opinion were the whole COURT.

Lord Chief Juſtice LEE—There can be no Ground to conſider this as a Settlement at *Twyford*, but upon ſuppoſing the firſt Indentures to have *ſubſiſted*, and that the Service at *Twyford* was *under* them. But *that* could not be; becauſe the EXCHANGE *of the Indentures* certainly amounted either in Law, or in Equity, (and they are the ſame thing in this Caſe) to a *Cancelling* of them, and a *Determination of the Apprenticeſhip under them.*

Beſides, there is NO *Conſent of the original Maſter*: But the *contrary* is apparent. His *Knowledge* of the Fact does not at all imply his *Conſent* to the Tranſaction.

St. Mary Kallendar and St. Michael.

The Apprentice's *living at Twyford*, was *not under*, but *contrary* to the first Indenture: It was in Consequence of a fresh Agreement, and for a *new Term*. Therefore

Mr. Justice Denison and *Mr. Justice* Foster concurred. *Mr. Justice* Wright was not in Court.

The Order of Sessions was QUASHED: And *The Original Order* AFFIRMED.

V. Post, No. 142. *Rex* v. *Inhabitants of Austrey*, 13 *Feb.* 1758. *Rex* v. *Inhabitants of Whitechurch Canonicorum*, No. 173. *Trin.* 1765, and No. 186, *Rex* v. *Inhabitants of Tavistock*, *Trin.* 1767. See also the several cases referred to at the bottom of p. 16, and *particularly* No. 180. 239.

No. 96. Rex *v.* Inhabitants of Sutton St. Nicholas, alias Lutton: Rex *v.* Inhabitants of Leverington.

Tuesday 21st *June* 1748.

Order unappealed from is *final*, unless some subsequent Settlement appears.

ON *Wednesday* 18th *May* last, a Motion was made by Mr. *Ford*, to *quash* an *original Order of two Justices made for the Removal of *John Bunting* and *Elizabeth* his Wife, and *Elizabeth*, *John*, *Susannah* and *Mary*, their four Children, from *Leverington* in the Isle of *Ely* to *Sutton St. Nicholas* otherwise *Lutton* in *Lincolnshire*; and also the Order of Sessions, made in Confirmation of the said original Order.

His Objection was, That they had been removed to *Leverington*, from *another* Parish, *viz. Sutton St. Mary's*, by a former † Order of two Justices UNAPPEALED *from*: By which Order, it was urged, the Parish of *Leverington* was *bound down*; unless some subsequent Settlement appeared.

And he moved, at the same time, to *affirm* the said original Order made for removing them from *Sutton St. Mary's* to *Leverington*, and also the Order of Sessions made in Confirmation of it.

N. B. This Order was made in *Nov.* 1747.

†This former Order, unappealed from, was made in *July* 1747.

RULES *to shew Cause, in both Causes.*

Mr. *Foster*, who now shewed Cause, would have had the Court *presume* "that a *new* Settlement had been gained." And he cited 2 *Salk.* 489. between *The Inhabitants of Thackham* and *Findon*, as a Case in Point, "where the Court *did presume* so;" and 2 *Salk.* 607. between

between *South Cadbury* and *Braddon*, to prove that "the Juſtices "are not bound to ſet forth their *Reaſons*, in their Judgments." SUTTON ST. NICHOLAS *and* LEVERINGTON.

Mr. *Ford*, in Reply, ſaid that a *new* Settlement ſhall NOT *be preſumed:* And he cited a Caſe in *Trinity* Term 1732, 5 & 6 *G.* 2. between the Pariſhes of *Horſington* and *North Fellerton*, as in Point.

Beſides, the ſecond Removal in the preſent Caſe is ſo *very recent* (only *four Months*) that there could be no Time to acquire a new Settlement.

An Exception was then taken by Mr. *Foſter*, to the original Order for removing the Paupers from *Sutton St. Mary* to *Leverington*—*viz.* That two of the Children appeared to be of ſeven and eight Years of Age; and it was not ſtated "that they had not gained a "Settlement, or were not ſettled elſewhere." But

Mr. Juſtice DENISON and *Mr. Juſtice* FOSTER (the only Judges in Court) concurred in Opinion (as to *this* Exception) "That Children of ſuch *tender Age* can not be ſuppoſed to have "gained any other Settlement than the derivative one from their "Father.

And as to Mr. *Ford's* Objection to the ſecond Removal (namely from *Leverington* to *Lutton*) they obſerved that the Removal to *Leverington* was in *July* 1747, and unappealed from; and the ſecond Order was made in *November* 1747. Now the firſt is concluſive, as not being appealed from: And there is *not a ſufficient Length of Time* to preſume a new Settlement. And they mentioned a Reſolution to the ſame Effect, about ſix Years ago: It was between *The Inhabitants of Godalming* and *St. Michael's Winchester*, *P.* 15 *G.* 2. and was in point with the preſent Caſe.—

[It was ſo. I omitted to report it; becauſe it was ſo plain and clear to my Apprehenſion, "that four or five Months" (which was the ſpace of time between the Making of thoſe two Orders) "could not be eſteemed a *ſufficient* Length of "Time whereupon to *ground* ſuch a Preſumption."

In a Caſe between the Pariſhes of *Capel* and *Weſt Peckham* in 12 *G.* 1. there was *four Years* Diſtance of Time; and yet the Court would *not intend a new* Settlement to have been gained. *V. Seſſions Caſes*, Ed. 1750, Vol. 2. pa. 81. No. 83. *Foley*, pa. 318. *Forteſcue* 327.]

See alſo *ante* No. 60. 67. *Poſt.* No. 176. 204. *accord.*

Per Cur.

The SECOND *original* ORDER *(for Removal of the Pauper* from Leverington to Lutton) *and the* ORDER OF SESSIONS *confirming it, were* QUASHED: *And*

SUTTON St. NICHOLAS *and* LEVERINGTON.

The FIRST *original* ORDER *(for Removal of them from* Sutton St. Mary's *to* Leverington) CONFIRMED: *But the* ORDER OF SESSIONS *made in Confirmation of* this *original Order was* QUASHED.

Note—

The firſt original Order of two Juſtices was *confirmed* by the Seſſions; *though* never appealed from.

And Mr. *Foſter*, the Counſel for *Leverington*, praying to have this confirmatory Order of Seſſions quaſhed, and the other Side not oppoſing it, *this* Order of Seſſions was quaſhed*, as being a *voluntary* and as it were *extra-judicial* Act of the Seſſions, to confirm an Order which was *not complained* of:

It was *agreed*, that one Reaſon of *mentioning the Ages of Children*, in Orders, was their not being removable from their Mother at a very tender Age (*viz.* under ſeven,) but to be ſent with her for Nurture.

* The very ſame Thing was done in the Caſe of *Godalming* and *St. Michael's* in *Winchester:* The Order of Seſſions which confirmed the firſt original Order of the firſt of *December* 1740, was *quaſhed*, becauſe it was *not made upon Appeal*; for *which* Reaſon it was agreed by the Court and Counſel to be a *void* one.

No. 97. Rex *v.* Inhabitants of St. George Hanover-Square.

Tueſday 28th *June* 1748.

Argument, that where the *Father* is dead, and his Settlement cannot be found, the *Children* ſhall follow the Settlement of the *Mother*.

TWO Juſtices made an Order for the Removal of *John Hays*, aged ten Years, *Thomas*, aged eight, and *Matthew*, aged three Years, the three Children of *Anne Hays Widow*, from *Ayleſbury* in *Buckinghamſhire* to the Pariſh of St. *George Hanover-Square* in *Middleſex:* And, upon Appeal, the Seſſions confirmed that Order.

The Caſe ſtates that the Woman was *born at Ayleſbury*; that ſhe was married to *Thomas Hays* an *Iriſhman*, *whoſe Settlement can not be found*, and who *told* her "that he had none;" that theſe three Children were *born of her*, *in lawful Wedlock*, *in St. George's Hanover Square*, where her ſaid Huſband was a Day-labourer; and ſhe went a Chairing.

Note—It does not appear that the Woman had gained any Settlement any where for herſelf: Nor was it poſitively ſtated "that her huſband *had none.*"

On

St. George Hanover-Square, *and* Aylesbury.

On *Saturday* the 18th of this Month, a Motion was made by Serjeant *Hayward*, to quaſh theſe Orders: And a Rule was made to ſhew Cauſe. And upon Cauſe being now ſhewn, he argued that where *no Settlement of the Father is to be found*, the Children ſhall be ſent to the *Settlement of the* MOTHER. To prove this, the following Caſes were cited by him and Mr. *Bennè*, who was on the ſame Side with him. *M.* 12 *Ann.* between **Dunsfold* and *Winſborough Green*; and *M.* 3 *G.* 2. *B. R.* between †*St. Giles's* and *St. Margaret's Weſtminſter*; and *H.* 12 *G.* 1. *Rex* v. *Inhabitants of* ‖ *Weſtram*. And the *Mother's* Settlement muſt be taken, they ſaid, to be at *Ayleſbury*; ſince ſhe was *born there*, and *no ſubſequent Settlement appears:* For *de non apparentibus et non exiſtentibus eadem eſt ratio.*

A Woman's Settlement is *only* SUSPENDED DURING MARRIAGE with an *unſettled* Huſband, by the Caſe between ‡ *Stretford* and *Norton*, *H.* 12 *G.* 2. But this Woman's Huſband is *dead:* She is ſtated to be a *Widow*. And Children born in lawful Wedlock are to be ſent to the Place of the *Mother's* Settlement; and *not* to be ſent as Vagrants to the Place of their Birth. To prove which, the Caſe between the Pariſhes of *Morton* and *Hanway*, *H.* 1 *G.* 1. was cited. *V. Forteſcue's Reports* 217, *Hanway* and *Mauton*.

‡ *Ante*, No. 39. pa. 122.

Sir *John Strange*, of Counſel on the other Side, for *Ayleſbury*, ſaid that the *Facts ſtated* were *not* a Foundation ſtrong enough for the Gentlemen to *raiſe* their *Law* upon.

And *Lord Chief Juſtice* LEE ſaid, This is *no Caſe at all:* For it is not ſtated "that the *Huſband* HAD NO *Settlement*; nor "that "the *Woman's Settlement was* at *Ayleſbury*." It does not appear that the Huſband *had no* Settlement: It is only ſtated "that the "Woman ſaid he *told* her ſo." It ſhould have been ſtated as a *Fact* "that he *had none*."

Sir *John Strange* ſaid that *if* it had been ſo ſtated, he could have ſhewn "that the Children, though legitimate, would have been "ſettled where they were born." *V. Cartbew* 433. *Whitechapel* v. *Stepney*; and 3 *Salk.* 257. *Luckington* v. *St. Auſtin's.**

* But ſee *Poſt.* No. 118; *contra.*

Per Cur. as the Facts are not ſufficiently ſtated, the Rule muſt be diſcharged.

The RULE *was* DISCHARGED; and *The* ORDERS AFFIRMED.

* *V. Caſes of Settlements*, pa. 22. No. 31. *Foley*, pa. 284. *Forteſcue* 314. *Seſſions Caſes*, Ed. 1750, Vol. 1. pa. 56. No. 53.

† *V. Seſſions Caſes*, Ed. 1750, Vol. 1. pa. 104. No. 97. *Caſes of Settlements*, pa. 76. No. 98. *Foley*, pa. 287.

‖ It was *Rex* v. *Inhabitants of Chidingſtone*, *Hil.* 1725, 12 G. 1. Reſolved "that the Wife's "Settlement before Marriage *remains*, where no Settlement of her Huſband appears." *V. Seſſions Caſes*, Ed. 1650. Vol. 2. pa. 115. No. 110. S. C.

Michaelmas

Michaelmas Term

22 Geo. 2. 1748.

No. 98. Rex *v.* Inhabitants of Wrinton otherwiſe Wrington.

Friday 18th *Nov.* 1748.

Service for *leſs* than a Year, under a *yearly* Hiring, cannot be coupled with a *prior* Service, under a *weekly* Hiring, of a different Nature.

TWO Juſtices made an Order for the Removal of *Ann Stokes*, Single-woman, from *Chewſtoke* to *Wrinton* otherwiſe *Wrington* (both in *Somerſetſhire*;) And, upon Appeal, the Seſſions confirmed that Order.

Caſe—The Pauper, being legally ſettled in *Wrinton*, and being about thirteen Years of Age, went into *Chew Magna*, to the Houſe of her Aunt *Hannah Spear*; and ſoon afterwards went into the Pariſh of *Winford*, and worked with one *Nicholas Walker*, Cloth-worker, in the Buſineſs of burling Cloths, by *a weekly Hiring* or Agreement, at the weekly Wages of 1*s.* 6*d.* each Week in the Winter, and 2*s.* each Week in the Summer: And on the *Saturday* in each Week, the ſaid *N. W.* when he paid the Pauper her Wages for that Week, ſaid to the Pauper "that *ſhe ſhould come the Week following*;" which the ſaid Pauper accordingly did, and *renewed the Contract for the Week enſuing, in the ſame Method.* That the Pauper continued to work with the ſaid *N. W. in Winsford* aforeſaid, in the Manner aboveſaid, for the *Space of one Year and a Half:* But *during all that Time* CONSTANTLY RETURNED *in the Evening, and lodged at her Aunt's in Chew Magna* aforeſaid, and alſo reſided with her Aunt there ON SUNDAYS *during the ſaid Time.* That on the laſt *Saturday* of the ſaid Service, the Pauper covenanted to ſerve the ſaid *N. W. for a Year*, for the Wages of 1*l.* 10*s.* and immediately entered into the ſaid Service, and *continued therein*, with the ſaid *N. W.* in the ſaid Pariſh of *Winford, for eleven Months next following*; and then, upon ſome Difference between her and her ſaid Maſter, they parted; and ſhe was paid the full Proportion of her ſaid Wages for the ſaid eleven Months. Whereupon the Seſſions being of Opinion "that "the ſaid Pauper did *not* acquire a Settlement by ſuch Service in "*Winford*," doth confirm the ſaid Order of the two Juſtices.

On

Wrinton and Chewstoke

On *Saturday* 18th *June* laſt, a Motion was made by Mr. *Gapper*, to quaſh theſe Orders; who urged that here was a good *Hiring for a Year*; and *alſo a Service for a Year*, within the Statute of 8 & 9 *W.* 3. *c.* 30. *ſect.* 4.

He cited the Caſe of *Rex* v. *The Inhabitants of South Moulton* in *Suffolk*, in 1 Lord *Raymond* 426. *H.* 10 *W.* 3. where it was holden "that a Service for half a Year, and then for another half Year under a ſubſequent Hiring for a whole Year, is enough." And 2 Lord *Raym.* 1511. *Rex* v. *Inhabitants of Aynhoe*, *M.* 1 *G.* 2. S. P. reſolved accordingly; *viz.* "That the Hiring and Service need "not be under the *ſame* Contract *."

* And ſee *Lucas's Reports* (10 *Mod.*) 287. S. P. accord.

RULE *to ſhew Cauſe.*

The Counſel for the Pariſh of *Winsford*, who now ſhewed Cauſe, (Mr. *Henley* and Mr. *Gould*) admitted that the Service need not be under one and the ſame Hiring, as has been ſettled in the Caſes above cited: (Though perhaps thoſe Caſes were carried full far.) But they argued that this Caſe *differs* much from thoſe Caſes: For under 8 & 9 *W.* 3. *c.* 30. *ſect.* 4. there muſt be a *Service* FOR A YEAR. Now this is only a *Service* for eleven Months under an Hiring for a *Year*; though there was an *Employment* for above a Year and a Half, if the Hirings for a Week are included. But a *Day-labourer* might as well be ſettled, as *this* Pauper, upon the ſame Principles. The Act requires a *Continuing and Abiding* in the Service; and the very Words themſelves import it: *Service* includes *Reſidence in the Houſe or at the Expence* of the Maſter. And the 5 *Eliz. c.* 4. *ſect.* 12. conſiders Perſons hired *weekly*, as Day-labourers only: And the third Section of the ſame Act prohibits the Hiring or being hired for *leſs* than a Year, to Clothworkers.

Sir *John Strange* and Mr. *Gapper*, on Behalf of *Wrinton*, cited many Caſes to prove how favourable the Court had always been to Settlements. And they ſaid, it was not neceſſary that the Servant ſhould lie in the *Houſe* or even in the *Pariſh* where the Maſter reſides: It is the *Service* that gains the Settlement. To prove which, they cited the Caſe of the *Oxford* Stage-Coachman; whoſe Servant was ſettled at *Wycombe*, where his Service was performed.

Lord Chief Juſtice LEE ſaid it had been now ſettled "that "a Service for leſs than a Year, under a Hiring for a Year, may be "*coupled* to a prior Service which was *not* under a Hiring for a "Year; provided it be a Continuance of the *ſame* Service."

Vide ante, No. 37. 87. *Poſt.* No. 175. S. P.

WRINTON *and* CHEWSTOKE

But both HE and *Mr. Juſtice* WRIGHT ſaid, Their only Doubt was, "Whether on theſe firſt Hirings, the Girl was to be "conſidered as a HIRED *Servant* within the Acts; or whether ſhe "was to be conſidered as a *Weekly-labourer, precedent* to the Hir-"ing of her for a Year." But

Mr. Juſtice DENISON ſaid he had no great Difficulty: For he thought the Court ſhould not go an Inch further than they did in the Caſe of *Aynhoe*.

This is a little Girl hired to burl Cloth: Probably twenty ſuch Children were ſo hired. The Hiring was *for a Week*: She *lay at Home*, and was at *Home on Sundays*. This was certainly as a *Day-labourer*; not as a *Servant in the Family*, and *Part* of the Family.

The Act of Parliament plainly means a *hired Servant*, who is PART OF THE FAMILY, *wherever he lies*. I *know* this Clothworking Buſineſs; and am therefore afraid of the *Conſequences* of extending theſe Settlements too far. Theſe Clothworkers hire perhaps a *hundred* Children, in different Parts of the Work: And it would be very inconvenient, if the Hiring any of them for a Year, after ſome Time of Service under a weekly Hiring; and their ſubſequent Service of perhaps only a ſingle Week under that yearly Hiring ſhould gain them a Settlement.

Mr. Juſtice FOSTER thought the Caſes had been carried full far enough already. He went through the Courſe of the Acts of Parliament, and deſcanted upon them; and had no Doubt but the firſt Hiring ought to be EJUSDEM *generis* with the laſt.

Now a *hired Servant* is always under the Government, Diſcipline and Control of the Maſter, even *on Sundays*. But this Child was *not at all in this Maſter's Service either on* NIGHTS *or on* SUNDAYS.

THE OTHER JUDGES concurring—(For *Lord Chief Juſtice* LEE and *Mr. Juſtice* WRIGHT were ſatisfied by what *Mr. Juſtice* DENISON had ſaid—)

Per Cur.

Both ORDERS *were* AFFIRMED.

Hilary

Hilary Term

22 Geo. 2. 1748

Rex *v.* Inhabitants of St. George's Southwarke. No. 99.

And afterwards

Rex *v.* Inhabitants of St. Olave's Southwarke.

Tuesday 7th *Feb.* 1748.

What is, or is not, a CERTIFICATE, under 8 & 9 *W.* 3. *c.* 30.

TWO Juſtices made an Order for the Removal of *John Peake* from *St. George's* to *St. Olave's*, both in *Southwarke*: And, upon Appeal, the Seſſions diſcharged that Order.

Caſe—*John Peake* the Pauper, being a *Lunatic*, was by a Certificate properly atteſted under the Hands and Seals of two of his Majeſty's Juſtices of Peace for the County of *Surrey* and ſigned by the Churchwardens and Overſeers of the Poor of the Pariſh of *St. George Southwarke* in the County of *Surrey*, directed "To all "whom theſe Preſents may concern," and *delivered to the Governors of Bethlem Hoſpital* in the Pariſh of *St. Stephen Coleman-ſtreet* in the City of *London*, IN ORDER TO GET THE PAUPER CURED, *as is uſual in thoſe Caſes*, acknowledging the ſaid Pauper to be legally ſettled in the ſaid Pariſh of *St. George* in the ſaid County of *Surrey*: But the ſaid Certificate was *not directed in particular, nor delivered to the Churchwardens or Overſeers or any of the Officers* of the ſaid Pariſh of *St. Stephen Coleman-ſtreet*, in which Pariſh the ſaid Hoſpital of *Bethlem* is ſituate. It appeareth alſo, that upon the Lunatic's being diſcharged out of *Bethlem* Hoſpital, the ſaid *Certificate was* DELIVERED BACK as is uſual in ſuch Caſes, by the ſaid Hoſpital of *Bethlem* to Mr. *Sweetenham* one of the Overſeers of the Poor of the ſaid Pariſh of *St. George*. But it did not appear that the *Execution of the ſaid Certificate was proved* by any Perſon whatſoever. And the Seſſions being of Opinion "that the ſaid *John Peake* is laſt legally ſettled in "the ſaid Pariſh of *St. George Southwarke* in the County of *Surrey*, BY VIRTUE OF THE SAID CER-"TIFICATE," order the *Appeal to be allowed*, and the *Order of the two Juſtices* to be *diſcharged*.

St. George's and St. Olave's Southwark

On *Tuesday* 23d *June* 1747, a Motion was made to quash this Order of Seſſions: And a Rule was made to ſhew Cauſe why it ſhould not be quaſhed.

Upon ſhewing Cauſe, on *Saturday* 6th *Feb.* 1747, it was, by Conſent, ordered that the firſt Day of next Term be given to the Proſecutors to ſhew Cauſe why the Order of Seſſions made for quaſhing the original Order for removing *John Peake* from *St. George's Southwarke* to *St. Olave's Southwarke* ſhould not be quaſhed, and the original Order confirmed: And in the mean Time, it is referred back to the Juſtices of Peace for the County of *Surrey*, to re-examine into the Merits of the Order of Seſſions; and to make further Order thereupon, according as ſhall appear to them upon the Merits thereof. Which further Order was made accordingly, and is as follows—

That *John Peake* the Pauper, being a *Lunatic*, was, by a *Paper-Writing* BEARING THE FORM OF A CERTIFICATE, *dated in December* 1736, *mentioned to be ſigned purſuant to the Act* * of Parliament in that Caſe made and provided; which ſaid Paper was delivered by *Ralph Sleigh*, Deputy Clerk of *Bethlem* Hoſpital, to *William Kinleſide* Son of *William Kinleſide* deceaſed, who entered into Bond, as a Security, to defend the ſaid Hoſpital againſt any Charges which they might be put to; and in Conſequence thereof, the ſaid *William Kinleſide* the Father did pay for eight Years that the Pauper was deemed incurable. And it further appeareth unto us, that the ſaid Paper-Writing *was* SIGNED *by the Churchwardens and Overſeers* of the Poor of the Pariſh of *St. George Southwarke*, *atteſted by two Witneſſes*, and *allowed by two Juſtices of the Peace*, ACCORDING TO THE STATUTE in that Caſe made and provided; and that the Hand of *Thomas Inwin*, Eſq; was ſubſcribed, as one of the Juſtices to the ſaid Paper-Writing: Which ſaid Paper-Writing was delivered by *William Kinleſide* to one Mr. *Sweetenham*, whom he believed to be a Pariſh-Officer of *St. George's Southwarke*. But the ſaid Paper-Writing, nor any other was *produced* to this Court; *nor* did it appear to us that the ſaid Paper-Writing was *ſigned by any other Perſon than as above*; nor did it appear that the ſaid *John Peake* the Pauper had *ever gained any Settlement* in the ſaid Pariſh of *St. George Southwarke*, *otherwiſe* than by the above *Paper-Writing purporting to be a Certificate*.

* *V.* 8 & 9 *W.* 3. *c.* 30. and alſo 3 *G.* 2. *c.* 29. *ſect.* 8.

This Court doth therefore order that the Appeal of the ſaid Appellants be, and the ſame is hereby *diſcharged and diſmiſſed*: And that the Order or Warrant of the ſaid two Juſtices of the Peace be, and the ſame is hereby *allowed and confirmed*.

N. B.

N.B. The Appellants were the Pariſh of *St. Olave Southwarke*; and the *firſt* Order of Seſſions *allowed* their Appeal, and *quaſhed the original Order*; But now, this *laſt* Order *diſmiſſes* the Appeal, and *confirms the original* Order. So that the two Orders of Seſſions are diametrically oppoſite to each other: And the *Name* of the Cauſe in this Court is conſequently changed. St. George's and St. Olave's Southwark

Tueſday 22d *November* 1748, the Counſel for *St. Olave's* moved to quath this *laſt* Order of Seſſions, and to *affirm the firſt* Order of Seſſions; and had a

RULE *to ſhew Cauſe.*

Cauſe was now ſhewn.

THE COUNSEL for *St. George's* Pariſh were therefore, *now*, for *ſupporting this laſt* Order of Seſſions; and argued that the Man being a *miſerable poor Lunatic* and his *Settlement unknown*, the Pariſh of *St. George* ſigned *out of mere Charity*, a Paper-Inſtrument ſerving to get him into *Bethlem* Hoſpital: From whence he was diſcharged as incurable. His *true* Settlement then appeared to be *in St. Olave's*; unleſs this Paper-Inſtrument, *never yet produced*, ſtands in the Way.

They DENIED *this Paper* TO BE *a Certificate*: It was not given *for the Purpoſes* mentioned in 13 & 14 *C.* 2. *c.* 12. *ſect.* 3. or 8 & 9 *W.* 3. *c.* 30. And the Act of 3 *G.* 2. *c.* 29 *ſect.* 8. has not taken away the Neceſſity of *proving the Hand of the Juſtice*; which *was not done* here: Neither was the Inſtrument *produced.*

On the other Side it was inſiſted by the Counſel for *St. Olave's* (who were for quaſhing the *laſt* Order of Seſſions) that this was a LEGAL *Certificate*; and that it is CONCLUSIVE *to the Pariſh who give it*; though not addreſſed to any particular Pariſh. To prove this, they cited, *Rex* v. *Inhabitants of St. Nicholas* in *Harwich*, *ante*, pa. 176. (No. 62.) and they cited the Caſe between the *Inhabitants of Honiton* and *St. Mary Axe*, in 2 *Salkeld* 535. and that of the *Inhabitants of New Windſor* and *White Waltham*, *Tr.* 5 *G.* 1. and alſo *Rex* v. *Inhabitants of Woodcheſter*, *ante*, No. 67. and *Rex* v. *Inhabitants of Headcorn*, *Tr.* 18 *G.* 2. *ante*, No. 86. where it was holden "that the Woman being called Wife in the Certificate, it was conclusive upon the Pariſh who gave it."

As to the Certificate's *not being produced*—It could not be *produced by St. Olave's*, who *never had it*: It was *returned* to *St. George's*.

St. George's and St. Olave's Southwark.

Nor was it necessary to *produce* it: A reasonable Evidence "that "there *was* such a Certificate," is sufficient. And though it is not said to be "under Hand AND *Seal*," yet *that* is not necessary. However, it is helped by the Words "according to the Statute." And it could not "bear the *Form* of a Certificate," (which it is stated to do) unless it was under *Seal*.

Lord Chief Justice LEE—I do not see any Law in the Case. The only Question is "Whether this be a *Certificate* WITHIN "THE ACT *of Parliament*."

The Thing necessary to infer the Obligation (which I agree to be binding on the Parish) is the *Owning* the Pauper to be a Person *legally settled in their Parish*.

Now this Paper-Writing, not produced, is only said to *bear the* FORM *of a Certificate*. Then the Order states what was done upon this Paper-Writing: And it is stated, "that it was *signed, attested, "and allowed according to the Statute*."

But the Statute, *in Terminis*, requires it to be *under the* SEALS *of the Churchwardens*. In the Conclusion of the Case it is called again, "a Paper-Writing PURPORTING *to be a Certificate*."

This was the Evidence before the Justices.

Now it does *not* appear that this was *a Certificate* OWNING *the Man to be an Inhabitant settled in St. George's*. It rather appears *otherwise*, by the State of the Case. And it was *delivered back again*, when the Lunatic was discharged. This Matter was all before the Sessions: And *no other* Pretence of a Settlement in *St. George's* appeared to the Justices.

Therefore we can not determine "that the *Sessions have done* "WRONG:" On the contrary, it *rather* seems that they have done *right*.

THE THREE OTHER JUDGES concurred that this could not be supported as a Certificate under 8 & 9 *W.* 3. *c.* 30. And

Mr. Justice FOSTER added, That he very much doubted (though he gave no absolute Opinion) whether a Certificate given for THIS *particular Purpose* of Admission into an Hospital for Cure, could be considered *as a* CERTIFICATE *under that Act*; which was made with a View to Persons coming out of one Parish into another, to get their Livelihood by their *Work and Labour*.

Per Cur. unanimously—*The* ORIGINAL ORDER *of two Justices*, and *The* LAST ORDER *of Sessions were* AFFIRMED.

Note—

St. George's and St. Olave's Southwark.

Note—The first Order of Sessions (which was imperfectly stated, and sent back to be restated) was considered by the Court as now quite out of the Case and a perfect Nullity.

It was also ordered (on the Application of the Counsel for *St. George's* Parish) that the Recognizance entered into by that Parish, on their removing the original Order of two Justices and the first Order of Sessions by *Certiorari*, be discharged.

Rex *v.* Inhabitants of Hacheston. No. 100.

Saturday 11th *Feb.* 1748.

Order for the Removal of *certificate* Persons should state them to be ACTUALLY chargeable, and not merely LIKELY to become so.

TWO Justices made an Order for the Removal of *Sarah Frost* and *John, Alexander, Mary, Sarah* and *Robert Frost*, her Children from *Baudsey* to *Hacheston* (both in *Suffolk*.) And the Sessions, upon Appeal, confirmed that Order.

Case stated—*John Frost* and *Sarah* his Wife, having a Settlement at *Hacheston* in *Suffolk*, obtained a *Certificate* in due Form of Law, for themselves and such Child or Children, as they should have during their *Residence in Baudsey*, from *Hacheston*, dated 14 *Oct.* 1738; and by Virtue thereof *went to live at Baudsey*, and there had *J. A. M. S.* and *R.* their Children. *John Frost* the Father, about two Years before his Death (which happened about three Weeks after *Midsummer* last 1747,) PURCHASED a Copyhold-Cottage and a small Yard or Piece of Land thereto adjoining, *in Baudsey* for 10*l.* and was thereto admitted, and paid his Purchase-Money and Fines and Fees accordingly. And the said Cottage not being habitable, the said *John Frost* the Father pulled down the same, and erected a new one, chiefly by his own Labour, being a Bricklayer or Mason; and *partly at his own Expence*, or upon his *own Credit*. Which Building was *estimated* by a Bricklayer or Mason and a Carpenter, who upon their Oaths in Court valued the Workmanship and Materials thereof, at 80*l.* 10*s.* 1*d.* That 4*l.* or 5*l.* Part of the said Expence *remained unpaid* at the Time of the Decease of the said *John Frost* the Father: But it did not appear, on the one Hand, that he had *paid* more than 30*l.* or 40*l.* and *that*, by a Return of Work to the Carpenter who was concerned therein, towards the Charges or Expences of the Building; nor, on the other Hand, did it appear by any Evidence, that there *remained any Thing more due* from him for the said Building or Materials, at the Time of his Decease, than the said Sum of 4*l.* or 5*l.* And the said *J. F.* the Father

HACHESTON and BAUDSEY.

Father died alſo indebted in 10 *l.* for Money borrowed. *John*, *Alexander*, *Mary*, *Sarah* and *Robert* the Children not having gained any Settlement for themſelves, diſtinct from that of their Father, reſided with him in the ſaid Cottage, as a Part of his Family, for above forty Days each, and to the Time of his Deceaſe, as aforeſaid.

Upon the Death of *John Froſt* the Father, by the Cuſtom of the Manor whereof the ſaid Copyhold-Cottage and Land is holden, the ſaid *Sarah* his Widow was *intitled to a third Part* of the ſaid Premiſſes for her natural Life, for or as her *Dower:* And the Premiſſes, ſubject to her Dower, *deſcended to the ſaid* ROBERT *the youngeſt Son* of the ſaid *J. F.* the Father as his Heir at Law, by Virtue of the ſaid Cuſtom.

Neither the ſaid *Sarah* the Widow, or the ſaid *Robert* had been admitted to the ſaid Premiſſes or any Part thereof; nor had they incurred any Forfeiture by Want of ſuch Admiſſion.

After the Deceaſe of *J. F.* the Father, *Sarah* his Widow and all the ſaid Children, as a Part of her Family continued to reſide with her in the ſaid Cottage for more than ſix Months and until their Removal from thence by the ſaid Order of two Juſtices: And during that Time, the ſaid *Sarah* the Mother complained to be relieved; and, by an Order for that Purpoſe obtained, *was relieved* accordingly: And within a few Days after the ſaid Order of Relief was delivered to the ſaid Pariſh of *Baudſey*, the ſaid Order of Removal was obtained. Whereupon the Seſſions is of Opinion "that "*none* of the ſaid Paupers *gained any Settlement in Baudſey*, by Rea"ſon of any of the Facts above ſtated;" and therefore confirm the original Order of two Juſtices, for the Removal of them to *Hacheſton*.

On *Wedneſday* 25th *Jan.* laſt, a Motion was made by Mr. *Ford*, to quaſh theſe Orders; upon this Objection to the *original* Order of two Juſtices:—It ſtates them to come into *Baudſey by Certificate*; and yet removes them upon being LIKELY *only to become chargeable*. He inſiſted likewiſe, that the Order of *Seſſions* was bad upon the *Merits:* For that *John Froſt* had gained a Settlement in *Baudſey*. In Proof whereof, he cited *Rex* v. *Inhabitants of Benjoe*, *H.* 2 *G.* 2.

Sir *Richard Lloyd*, who was to have ſhewn Cauſe now, denied the latter Poſition, as to the Settlement; but owned he could not ſupport the *original* Order; as the Paupers, who appeared to have come into the Pariſh of *Baudſey by Certificate*, are *not adjudged* to be ACTUALLY *become chargeable*, but only *likely* to become ſo. And

THE

THE COURT and Counſel all agreed that it was to no Purpoſe to enter into the * *Merits*, when the original Order appeared to the *Court to be* BAD upon the Face of it: Since the Court could not poſſibly affirm the Order of Seſſions confirming it. HACHESTON *and* BAUDSEY.

Therefore

BOTH ORDERS *were* QUASHED.

* As to the Merits—*V.* Poſt. No. 177. *Rex* v. *Inhabitants of Dunſburch, Hil.* 1766. S. P.

Rex v. Inhabitants of St. Ebb's. No. 101.

TWO Juſtices made an Order for the Removal of *Caleb Guy* from *Holywell* otherwiſe *St. Croſs* in the Suburbs of *Oxford*, to *St. Ebb's* in *Oxford:* And the Seſſions, upon Appeal, confirmed that Order. *Monday* 13th *Feb.* 1748.

Caſe ſtated—Caleb Guy went to *Holywell* otherwiſe *St. Croſs*, to be hired to *Thomas White*, who lived in and was an Inhabitant of the ſaid Pariſh of *Holywell*; and being aſked "What he would "give," he ſaid "He would not give him more than he gave to "his former Boy, which was 20*s.* a Year." He was then hired in this Manner; was to *come for* A QUARTER *of a Year*, and to have after the Rate of 20 *s.* a Year; and IF *he and his Maſter liked* each other, *was to continue* ON. He continued a Year and a Half over and above the ſaid Quarter, without any further or other Hiring; and received his Wages as he had Occaſion for the ſame. *Conditional* HIRING, with *Service*, for a Year, will gain a Settlement.

On *Wedneſday* the 1ſt Inſtant a Motion was made by Mr. *Nares*, to quaſh theſe Orders: For a *conditional Hiring* is a *Hiring for a Year*, PROVIDED *the Condition be performed. Rex* v. *Inhabitants of Lidney* †, *Tr.* 6 & 7 *G.* 2. *B. R.* and *Rex* v. *Inhabitants of New Windſor* ‖. *H.* 8 *G.* 2. *B. R.* (Colonel *Meyrick's* Servant) accordingly ‡. So that, upon the whole, the Settlement is in *Holywell*; and not in *St. Ebb.*

† *Ante* No. 1.

‖ *Ante* No. 7.

‡ See alſo *Rex* v. *Inhabitants of Atherton, H.* 16 *G.* 2. *B. R. Ante*, No. 71. S. P.

A RULE was then made to ſhew CAUSE: And now, upon Motion, it was made ABSOLUTE; no Cauſe being ſhewn.

V. Poſt. No. 109. *Rex* v. *Inhabitants of Ham, Mich.* 1751, 25 *G.* 2.

No. 102.

Rex *v.* Inhabitants of Mawnan.

A *parol* Binding, without an *Indenture*, will not gain a Settlement, by APPRENTICESHIP. *Vide Ante.* No. 94. *Poſt.* No. 104. 173. 203. 227. 262. S. P. But ſee the Statute 31 *G.* 2. *c.* 11.

UPON *Friday* 4th *Nov.* laſt Mr. *Henley* moved to quaſh an Order of Seſſions confirming an Order of two Juſtices made for removing *Jane Luckey* from *Falmouth* to *Mawnan*; their Determination upon the Caſe ſtated, being (as he ſaid) contrary to Law: It was founded upon her having ſerved an *Apprenticeſhip* in *Mawnan*.

His Objection was, "That it was only a PAROL Binding; not "by *Indenture*:" Whereas the Act of 3 & 4 *W.* & *M. c.* 11. *ſ.* 8. is confined to a Binding *by* INDENTURE.

RULE *to ſhew* CAUSE.

He now moved to make the Rule abſolute. And Mr. *Ford*, of Counſel on the other Side, owned it could not be ſupported.

RULE *made* ABSOLUTE.

Eaſter Term

22 Geo. 2. 1749.

No. 103.

Rex *v.* Inhabitants of Cuckfield.

Monday 8th *May* 1749.

The *Wife* and *Children* cannot be *ſeparated* by Removal from their *Huſband*, and *Father*, ſo long as he remains alive.

UPON *Saturday* 22d *April*, Sir *John Strange* moved to quaſh an Order of Seſſions which vacated (in Part) an Order of two Juſtices made for removing *Turner Briſtow*, *Elizabeth* HIS WIFE, and *Scipio* and *Anne* THEIR *Children* from *Cuckfield* in *Suſſex* to *Edenbridge* in *Kent*.

The

The Seſſions, on Appeal, generally, and without aſſigning any particular Reaſon or ſtating any ſpecial Caſe, confirm the ſaid Order of two Juſtices, as to the Father: And quaſh it AS *to the* SAID *Elizabeth and the* SAID *Children*.

His Objection was—That the Wife and Children *can not be ſeparated* from the Huſband, ſo long as he remains alive.

A Rule was made, to ſhew Cauſe " why the Order of Seſſions " ſhould not be quaſhed, ſo FAR *as it relates to the Wife and* " *Children*."

Mr. Henley, who was to have ſhewn Cauſe, owned it could not be ſupported as it now ſtands: But he deſired that it might be ſent back, to be more particularly ſtated; alledging the real Fact to be " that the Woman was *not* his *Wife*; nor, conſequently, the " Children his *legitimate* Children."

Sir *John Strange, contra*—This is an Allegation contrary to what appears on the Face of both Orders: For *both* Orders *call her his Wife*, and *Scipio* and *Anne their* Children. And a Wife and Children can not be ſeparated from the Perſon who is Huſband and Father to them.

But Mr. *Henley* appealed to the Order of Seſſions, which was not quite as Sir *John* ſtated it; but varied the Expreſſion, and called them " *the ſaid Elizabeth*" and " *the ſaid Children*."

The Rule was enlarged to next Term: And it was ſent back to the Seſſions, to re-examine the Matters relating to the Settlement of the Wife and Children, and ſtate them fully to the Court.

N. B. I ſhould have deleted this Caſe, if it had not occurred to me, that poſſibly ſome Gentlemen might have taken their Note of the former Motion only; and would like to know how it went off, on ſhewing Cauſe.

Trinity Term

22 & 23 Geo. 2. 1749.

No. 104.

Rex *v.* Inhabitants of St. Helen's in Abingdon.

Tueſday 6th *June* 1749.

PAROL *Evidence* of an *Indenture*, not produced, inadmiſſible.

Poſt. pa. 735. S. C.

TWO Juſtices made an Order for the Removal of *Anne Hutt*, the Wife of *Joſeph Hutt* (who had abſconded for ſix Months) and her four Children (naming them and ſpecifying their Ages) from *St. Saviour's Southwark* to *St. Helen's:* And the Seſſions, upon Appeal, confirmed that Order.

The ſpecial Caſe ſet forth long and minute Circumſtances, and parol Evidence concerning an *Indenture of Apprenticeſhip* (not produced) of *Joſeph Hutt* the Father, to *William Hutt* his Grandfather: Upon the whole of which, it appeared that the Indenture was *not produced*, and probably (even to very ſtrong Preſumption) was *never ſtamped.*

On *Tueſday* 18th of *April* laſt, a Motion was made by Mr. *Lawſon*, to quaſh theſe Orders. He made two Objections to the original Order, and two to the Order of Seſſions.

To the original Order——

1ſt, It ſends the Woman from her Huſband.

2dly, It adjudges *St. Helen's* to be the Place of *her* Settlement: Whereas, it ſhould have been *his*, the Huſband's.

To the Order of Seſſions——

1ſt, There is only *parol* Evidence of an Indenture; which ought itſelf to have been *produced.*

2d, It does not appear to have been *ſtampt.*

Upon ſhewing Cauſe now, it was urged that the Settlement was in *St. Helen's:* And the Caſe in 2 *Salk.* 470. between the Inhabitants of *Dumbleton* and *Beckford* was cited; and alſo *Rex* v. *Inhabitants of St. Mary Cheſter*, *H.* 14 *G.* 2. *B. R.*

Mr. *Ford*, for *St. Helen's*, ſaid that the Caſe cited out of *Salkeld* was a *ſtrange* Caſe. And I find by my *own* Notes, that the *Cheſter* Caſe was never determined: It was, by Conſent, ſent down to be more certainly ſtated, on *Tueſday* 17th *November* 1741.

Per

Per Cur. clearly—There is not enough ſtated to ſhew that this is a Binding within the Act. Therefore

Both Orders QUASHED. St. Helen's *and* St. Saviour's Southwark.

Vide ante No. 51. *contra.*

Rex *v.* Inhabitants of Weſt Torrington. No. 105.

Tueſday 13th *June* 1749. Order quaſhed, being made at a Seſſions, after the *next*, without an *Adjournment.*

MR. *Wilmot* moved to quaſh an Order of Seſſions quaſhing an Order of two Juſtices, for removing *John Weſt* and *Anne* his Wife from *Weſt Torrington* to *North Thoreſby*, (both in *Lincolnſhire.*) The Record ſays—"Be it remembered that the General Quarter-"Seſſions of the Peace of our Sovereign Lord the King was held by "Proclamation at *Kirton*, in and for, *&c*, on *Monday* the 9th of "*January*, *&c*; and from thence *adjourned* to *Caiſter* in the ſaid "Parts and County, to *Wedneſday* the 7th, *&c*: Where there was "then NO *Seſſions held, purſuant to the ſaid Adjournment.* And that "at the *General* Quarter-Seſſions of the Peace of our ſaid Lord the "King held at *Horncaſtle*, in and for *&c*, on *&c*, before *&c*, Ap-"peal to THIS Court *&c.*"

1ſt Objection, The Seſſions at *Horncaſtle* could not take it up at all, for *want of Juriſdiction*; being held *without Adjournment. Rex* v. *The Inhabitants of Polſted*, *H.* 20 *G.* 2. *B. R. Str.* 1263.

2d Objection, The Appeal is not made to the *next* Quarter-Seſſions.

Mr. *Hewitt*, *contra*—1ſt, The firſt Seſſions holden at *Kirton*, was adjourned to *Caiſter*: But none was there holden. Then a Seſſions was held at *Horncaſtle*; at which laſt Seſſions, this Order was made. But it does not appear that either the firſt, at *Kirton*; or the ſecond, at *Caiſter*, was *well* holden. For it does not appear *before what* Juſtices that at *Kirton* was holden. So that the laſt might be an original Seſſion, in Point of Law; the two former being *null.* Therefore the Caſe cited (which I agree to) does *not come up* to this Caſe now before the Court.

2d—The ſame Anſwer ſerves equally to *this* Objection: *viz.* That *if* the firſt Seſſion at *Kirton* was *not good*, and none was holden at *Caiſter*; then this at *Horncaſtle* on *Friday* 13th *January was* the *next* Quarter-Seſſions.

Mr. *Wilmot* in Reply—The Act of 36 *E.* 3. *c.* 12. expreſsly directs four Seſſions only to be holden in a Year; *viz.* within the *U-*

tas

West Torrington and North Thoresby.

tas of the *Epiphany*; within the ſecond Week of *Lent*; between *Penteco*ſt and St. *John* the Baptiſt; and within eight Days of St. *Michael*.

The 12 *R.* 2. *c.* 10. directs one in each Quarter of the Year, at leaſt.

Then 2 *H.* 5. *ſtat.* 1. *c.* 4. ſpecifies the *Times* of holding them; which are, in the firſt Week after *Michaelmas*, in the firſt Week after *Epiphany*, the firſt Week after the Clauſe of *Eaſter*, and in the firſt Week after the Tranſlation of St. *Thomas* the Martyr: and more often, if need be.

This appears to be a *General* Quarter-Seſſion holden at *Kirton*; and an *Adjournment from Kirton to Caiſter* (where none was holden:) And the third, at *Horncaſtle*, mentions *no Adjournment from any former Seſſion*.

Lord Chief Juſtice Lee aſked Mr. *Hewitt* if he had any Caſe to ſhew that it was neceſſary, in a Seſſion *only for the Purpoſe of Adjournment*, to *name the Juſtices* before whom it was holden.

To be ſure, *if* the firſt Seſſion was *well* holden; the Seſſion was *completed*, if there was no Adjournment of it from thence to *Horncaſtle*: And the Caſe of *Polſted* is in Point. [It is ſo: See it in 2 Sir *John Strange* 1263.]

See alſo *Ante* No. 26. 32.

The Rule *to quaſh the Order of Seſſions and confirm the original Order, was ordered to be* made absolute, *unleſs Cauſe be ſhewn Tomorrow. And* no *Cauſe was then ſhewn.*

Michaelmas Term 23 Geo. 2. 1749.

No Determination upon this Subject.

Hilary

Hilary Term 23 Geo. 2. 1749.

Nor in this Term.

Eaſter Term 23 Geo. 2. 1750.

Nor in This.

Trinity Term 24 Geo. 2. 1750.

Nor in this Term.

THERE was indeed a Caſe of *Rex* v. *Inhabitants of Bodmyn*, which was twice before the Court in *Michaelmas* Term 1749; and afterward, in *Eaſter* Term 1750: But it was propoſed that both Orders ſhould be *quaſhed by Conſent*, and a new Order made; and this was afterwards agreed to, on 24th *November* 1750.

The original Order removed the Paupers *John Beard*, with his Wife, and *Maud* their Daughter, from *Bodmyn* to *Warleggan*: *Warleggan* appealed to the Seſſions. The firſt Seſſions were equally divided: And "therefore did not come to any Reſolution thereupon." So ſays the Order: But there is no expreſs Adjournment of the Appeal. The ſubſequent Seſſions take it up thus—"Upon the Rehear-"ing of an Appeal undetermined at the laſt Seſſions, *&c*, *&c*;" and diſcharge the original Order. It was objected that this ſubſequent Seſſions had *no Juriſdiction* to take the Appeal up again; the former Seſſions not having adjourned it.

Michaelmas Term

24 Geo. 2. 1750.

No. 106. **Rex *v.* Inhabitants of St. Maurice's in Wincheſter.**

Wednesday 21ſt *Nov.* 1750.

The Son of a *Certificate*-man may gain a Settlement by *Apprenticeſhip* in a *third* Pariſh. And *Parol* Evidence of the Maſter's being *certificated*, without producing the *Certificate*, will not defeat the Settlement.

TWO Juſtices made an Order for the Removal of *Richard Stephens*, *Martha* his Wife, *Mary*, *Thomas*, *Elizabeth* and *Richard*, their four Children from *St. Maurice's* to *St. Mary Kallendar's* in *Wincheſte:* And, upon Appeal, the Seſſions quaſhed that Order.

The Seſſions ſtate a ſpecial Caſe; *viz:* That *Richard Stephens*, the Father of *Richard Stephens* the Pauper, went into *St. Maurice's*, by a proper *Certificate* from *St. Mary Kallendar's*: The Son was *born in St. Maurice's, under the Certificate*; and lived there with his Father till he was *bound Apprentice* to *Steward Mitchell* in *Kingſworthy*; where he ſerved ſeven Years. But on the Part of *St. Maurice's* Pariſh, PAROL *Evidence* was given by the Maſter *Stewart Mitchell*, "that *he himſelf came into Kingſworthy* with a *Certificate* acknow-"ledging him to be a Pariſhioner of *Micheldever*; and *reſided there*, "AS *a Certificate-man from Micheldever*, during the *whole Time of* "*the Apprenticeſhip*: Which Certificate from *Micheldever* he *deli-*"*vered* to one *Hide*, AN OFFICER of the Pariſh of *Kingſworthy*." But there was *alſo* PAROL *Evidence* given by one *Earl* the preſent Overſeer of *Kingſworthy* (who was ſerved with a *Subpœna duces tecum*) "That there was NOW *no ſuch Certificate to be found* in that "Pariſh; and that he had never ſeen or knew of any ſuch; and "that *if there* had been any * ſuch, it was MISLAID."

* *N. B.* This Certificate, if there was any, muſt have been above 21 Years ago.

The Seſſions adjudge that the Settlement was NOT *in St. Mary Kallendar's*; BECAUSE no Certificate in *Writing* was *produced:* The Words are—"Therefore this Court is of Opinion, that AS no *Cer-*"*tificate* in WRITING *was produced*, the Place of the laſt legal "Settlement of the ſaid *Richard Stephens* the Pauper, *Martha* his "Wife, and their four Children, is *not* † in the Pariſh of *St. Mary* "*Kallendar*."

† But they do not declare and adjudge *where* the Settlement is——*N. B.* They diſcharge the Order of two Juſtices in the firſt Part of this Order.

St. Maurice's and St. Mary Kallendar's.

On *Saturday* the third of this Month, a Motion was made by Mr. *Ford*, to quaſh this Order of Seſſions. The only Objection he made to it, was "That PAROL *Evidence* of *Stewart Mitchell's* Certificate "from *Micheldever* to *Kingſworthy* WAS SUFFICIENT *Evidence*; "and that it was *not neceſſary to* PRODUCE *the Certificate.*" And then it follows, that if this Apprenticeſhip was ſerved to a *Certificate-man*, he did *not* thereby gain a new Settlement in *Kingſworthy*; and conſequently *remained ſettled in St. Mary Kallendar* by Virtue of the original Certificate from them to *St. Maurice's*. The Seſſions have given *ſuch* a wrong Reaſon for their Judgment, as plainly ſhews that they *did not attend to the parol Evidence*; but *relied* on the Want of *producing* a Certificate in Writing.

RULE *to ſhew Cauſe.*

On *Saturday* 17th *Nov.* 1750, Mr. *Henley* ſhewed Cauſe. He denied that there was *any* Evidence *at all* "that any Certificate from "*Micheldever* to *Kingſworthy ever exiſted* or was *ever delivered.*" *Stewart Mitchell* was no Judge of the *Validity* of a Certificate. And if there was one, it does not appear that it is loſt. Therefore, *as none was produced*, the Seſſions have rightly judged "that the *Fact* "of there having been ſuch a Certificate was NOT *made out.*" And if it was *not*, then the Pauper gained a Settlement in *Kingſworthy* by ſerving an Apprenticeſhip there.

At another Day, 21ſt *Nov.* 1750. (to which it was adjourned) the Counſel who argued now for the Pariſh of *St. Mary Kallendar* and for the Order of Seſſions (Mr. *Henley* and Mr. *Stanniford*,) argued that PAROL *Evidence* can not be given of a *Certificate in Writing*. The Act of 3 *G.* 2. *c.* 29. *ſect.* 8. makes the Oath of one of the Witneſſes, and the Certificate by the Juſtice "that ſuch Oath "was made" to be the *legal Proof of a Certificate*. And even *admitting* that *parol Evidence* MIGHT *be given*, yet there is no Evidence that there *was* ſuch a Certificate, or that it is *loſt*. *Earl* only teſtifies that he has never *ſeen* it: But it does not appear that any *Search* has been made for one.

By the Act of 8 & 9 *W.* 3. *c.* 30. it ought to be under the Hands *&c*, of the Churchwardens and Overſeers, and atteſted *&c*, by two Juſtices of Peace; and it ſhould have been delivered to one of the *Churchwardens* or *Overſeers* of *Kingſworthy*: Whereas here this parol Evidence is only "That it was delivered to one *Hide*, an "OFFICER of the Pariſh of *Kingſworthy*.

St. Maurice's and St. Mary Kallendar's.

Therefore the Settlement was in *Kingſworthy*: Conſequently the Order of Seſſions is right.

The Counſel for *St. Maurice's* and againſt the Order of Seſſions, (Mr. *Ford* and Mr. *Pratt*) argued that the parol Evidence here given was *ſufficient*, and was *all that was poſſible* for the Pariſh of *St. Maurice* to give: And that *Earl's* Evidence *imported* a *Search to have been made* in *Kingſworthy* for ſuch a Certificate. And after ſuch a Diſtance of Time as twenty-one years, *omnia præſumuntur ritè acta.*

The *Reſidence under the Certificate* during the *whole* Time of the Apprenticeſhip ſhews it to have been regular; and is like Poſſeſſion under a Deed.

Lord Chief Juſtice Lee—The Seſſions have admitted, and have ſtated the Evidence on both Sides; and conclude that As *no Certificate* has been produced, "the Place of *laſt* legal Settlement "is *not* in *St. Mary Kallendar's.*" So that it appears they did *receive* all the Evidence that was given: And it does not appear that there was any Objection made to parol Evidence.

It is not *now* inſiſted upon, that this was *concluſive* Evidence to the Juſtices, "that there was a Certificate." And *if* there was one, yet it *might* be an *irregular* Certificate. We had an Inſtance here of one, *lately**, to *Bethlem*; which did *not* conclude the Pariſh giving it, *as* a *proper* Certificate from that Pariſh under the Certificate Act, ſo as to bind them in other Reſpects than that particular Purpoſe for which it was given.

Now the Juſtices at Seſſions are ſo far from having determined "that parol Evidence ought *not* to be admitted," that they have actually *received all that was offered.* Therefore I ſee no Reaſon to quaſh the Order of Seſſions.

The three other Judges concurred in Opinion.

Per Cur. unanimouſly—

Rule discharged: And *Order of Seſſions* affirmed.

* *Hil.* 1748. 22 *G.* 2. *Rex* v. *Inhabitants of St. Olave's Southwark, ante* No. 99.

Hilary

Hilary Term

24 Geo. 2. 1750.

Rex *v.* Inhabitants of Wincaunton.

No. 107.

Thurſday 31ſt *Jan.* 1750.

TWO Juſtices made an Order for the Removal of *John Forward* and *Sarah* his Wife, and *Martha* and *Sarah* their two Children, from *Crediton* in the County of *Devon* to *Wincaunton* in *Somerſetſhire:* And, upon Appeal, the Seſſions confirmed that Order. Whereupon this ſpecial Caſe is ſtated.—

A GENERAL HIRING is a *Hiring for a Year*, where there are no Circumſtances to the contrary.

John Forward was *born in Wincaunton*, where he lived with his Parents until his Age of ſeventeen; when, being informed that *Samuel Williams of* CHARLTON HORETHORNE wanted a ſtout Boy, he went and offered to ſerve him; and the ſaid *Williams*, liking him, HIRED the Pauper to *ſerve him in Huſbandry*, and agreed to give him Meat Drink Waſhing and Lodging and Cloaths when wanted; but NO PARTICULAR TIME *was agreed on*; and the *Pauper apprehended* his Maſter might turn him off, or he might have gone away from him, *at their Pleaſure:* Nevertheleſs, there was *no Agreement* for that Purpoſe. That thereupon, the Pauper continued with and ſerved the ſaid *Williams* in *Charlton Horethorne* aforeſaid for two Years and a Half: And, at the End of the firſt three Quarters of a Year, wanting Cloaths, his Maſter provided Cloaths for him; and ſo afterwards, when he had Occaſion for Cloaths. That the Pauper afterwards removed into the ſaid Pariſh of *Crediton:* But having gained no Settlement there, was removed, with his ſaid Wife and Family, by Virtue of the ſaid Order. This Court are of Opinion and do adjudge "that the ſaid Pauper gained NO *Settlement by ſuch* "*Service in Charlton Horethorne* aforeſaid;" and do therefore ratify and confirm the ſaid Order, *&c.*

On *Friday* 23d *Nov.* laſt, a Motion was made by Mr. *Gapper*, to quaſh this Order.

The Queſtion was, "Whether this be a Settlement within the "3 & 4 *W. & M. c.* 11."

WINCAUNTON and CREDITON.

To prove that *a* GENERAL *Hiring* is a *Hiring* FOR A YEAR, *Bro. Abr.* Title *Labourer, pl.* 20. was cited:—Which mentions that by the Statute of *Labourers*, 24 *Ed.* 3. *c.* 1. *Quilibet potens in Corpore doit ſerver.* And *Hankford* ſaid "that every Infant of twelve Years, "retained, ought to ſerve.*" And *pl.* 23. *per Hankford*—"*Si Jeo* "*face Covenant oue un, de moi ſerver, il viendra en mon Service* "pour un an ENTIER." And 1 *Inſt.* 42 *b.* "If a Man retain a "Servant *generally*, without expreſſing any Time, the Law ſhall "conſtrue it to be of *one Year:* For *that* Retainer is according to "*Law.*" 23 *Ed.* 3. *c.* 21. *&c.*

* *Hankford* was then a Judge of the Common Pleas.

The Act of 8 & 9 *W.* 3. *c.* 30. only requires a *Service:* The HIRING depends upon 3 & 4 *W. & M. c.* 11. Now here is an expreſs *Service* ſtated. So that the only Queſtion is upon the *Hiring.*

The modern Caſes cited were *Crowland* v. *St. John Baptiſt* in *Peterborough, Viner,*—Title—*Settlement of the Poor*; where it was ſaid "he ſerved for a Year;" the Order was held good: "For the "*Law preſumes* he was HIRED *for a Year.*" And *Jeſſop* and *Miſſenden* Pariſhes, *Trin.* 13 *Ann.* where *Sarah Barnes* came AS *a hired Servant*, and lived with her Father for a Year in a little Cottage at *Miſſenden.* The Father gave her 10*s.* a Year, and what elſe ſhe could get: She was holden to be ſettled at *Miſſenden.* And *Rex* v. *Inhabitants of Putney*, 13 to 15 *G.* 2. Theſe were cited to prove that a GENERAL *Retainer* is a Retainer FOR *a Year.*

Note—*This Point* was (in *Mich.* Term 1741, 15 *G.* 2.) taken for granted and undoubted in this laſt-cited Caſe, by Lord Chief Juſtice *Lee*, Mr. Juſtice *Page*, and Mr. Juſtice *Wright*; though the Caſe itſelf was *never determined.*

The Counſel who now ſhewed Cauſe argued that this was only a *Hiring* AT WILL: Though they admitted that the *old* Books do prove that a GENERAL *Hiring* is, upon the Statute of Labourers, a *Hiring for a Year.*

But yet the *Circumſtances* of the Hiring may ſhew the INTENTION *to be otherwiſe.* And *this* Hiring ſeems, upon the *Circumſtances* of it, to be only *at the Will of each.* The Rule is *not* to be taken *ſo ſtrictly and abſolutely*, as that it *can not* be otherwiſe: But only "that, *primâ facie*, a general Hiring is a Hiring for a Year."

Lord Chief Juſtice LEE—It is agreed "That a GENERAL "*Hiring* is a *Hiring for a Year*," according to 1 *Inſt.* 42. *b.*

Therefore

Therefore the only Queſtion is "Whether the CIRCUMSTANCES "of this Caſe ſhew an INTENTION *to the Contrary.*" WINCAUNTON and CREDITON.

The *Apprehenſion* of the Pauper is ſtated indeed to have been to the contrary: But it is alſo ſtated "that there was NO *Agreement* "for that Purpoſe."

His Lordſhip ſaid he did not *ſee* any Circumſtances to vary it from the *general* Rule, which has been and muſt be agreed.

THE THREE OTHER JUDGES were of the ſame Opinion.

Per Cur.

Both ORDERS QUASHED.

As to Hiring for a Year—*V.* Poſt. No. 139. *Rex* v. *Inhabitants of Milwich, Trin.* 1757, 30 & 31 G. 2. No. 157. *Rex* v. *Inhabitants of Weybill, Hil.* 1760. And No. 160. *Rex* v. *Inhabitants of Berwick St. John, Eaſter* Term 1760. See alſo *Poſt.* No. 202. 206. 236. 255. 257. S. P.

Eaſter Term 24 Geo. 2. 1751.

No Determination on this Subject.

Trinity

Trinity Term

24 & 25 Geo. 2. 1751.

No. 108. Rex *v.* Inhabitants of Ozleworth.

Saturday 22d *June* 1748.

Conditional Hiring for three Years, and *Service* under it for a Year and a Quarter, with an intermediate Abſence (through Illneſs) of three Months, will gain a Settlement. And a *Servant* cannot be removed, whilſt actually IN his *Maſter's* Service.

TWO Juſtices made an Order for the Removal of *William Hewett* from *Watton under Edge* to *Ozleworth*, (both in *Gloucesterſhire*:) And the Seſſions, upon Appeal, confirmed that Order.

Caſe—The Pauper, *William Hewett*, had gained a Settlement in *Ozleworth*; but, ſubſequent to it, agreed with *Thomas Palſor*, an Inhabitant legally ſettled in *Wotton under Edge*, Clothworker, to ſerve him in the ſaid Buſineſs *for three Years*, at 3 *s.* a Week for the firſt Year, 3 *s.* 6 *d.* a Week for the ſecond Year, and 4 *s.* a Week for the third Year. He was to work only twelve Hours in a Day, and to have one Penny for every Hour he ſhould work above the twelve Hours: And that the ſaid *Thomas Palſor* ſhould retain 6*d.* a Week out of the above Wages, during the ſaid three Years, by Way of a Depoſit or Security for the ſaid *William Hewett's* performing his Agreement; but which ſaid 6 *d.* by the Week was to be paid *to the ſaid William Hewett* at the *End* of the ſaid Term, *if he performed* the ſaid Agreement, *or* IF *the ſaid T. P. ſhould* DISCHARGE *him of the ſaid Service* BEFORE THE END *of the ſaid Term*; but was to be *kept* by the ſaid *T. P.* IF *the ſaid W. H.* QUITTED *the ſaid Service* BEFORE THE END *of the ſame Term*. That the ſaid *T. P.* was *not* to find or provide Meat Drink Waſhing or Lodging for the ſaid *W. H.* during the ſaid Term: And that it was UNDERSTOOD *between the ſaid T. P. and W. H.* "*that the ſaid T. P. might turn* "*the ſaid W. H.* OUT OF HIS SERVICE *at any Time* during the "Term; paying to the ſaid *William* the Sixpences before retained." That the ſaid *W. H.* worked with the ſaid *T. P. under the ſaid Agreement*, for about *ſix* Months; and then, *being ill*, *abſented* himſelf from the Service for about three Months; and then returned to, and was received by the ſaid *T. P.* and continued to work for him

him under the ſaid Agreement, TILL *the Time of his being removed* by the ſaid Order of Juſtices, being for *about three Quarters of a Year* after the ſaid Return to the ſaid *Thomas Palſor*: And that, during the Time of his working with the ſaid *T. P.* and during his Sickneſs, the ſaid *William Hewett lodged* in the ſaid *Pariſh* of *Wotton under Edge*; but *not* in the ſaid *Thomas Palſor's Houſe*. OZLEWORTH *and* WOTTON UNDER EDGE.

On *Tueſday* the 7th *May* laſt, a Motion was made by Mr. *Biſhop*, to quaſh theſe Orders: Who inſiſted that this was a good Settlement in *Wotton under Edge*, upon the ſpecial Caſe above ſtated.

The Seſſions could not, he ſaid, or ought not to apprehend that the Abſence of the Servant *during his Illneſs* could vitiate the Settlement: Eſpecially, as the Maſter received him again, when it was over. In *Rex* v. *Inhabitants of Iſſip**, *P.* 7 *G.* 1. *B. R.* the Servant was abſent, being ſick, ſix Days; to ſee his ſick Mother, four Days; and went away three Days before the End of the Year; and yet it was held a good Settlement. In *Rex* v. *Inhabitants of Eaton*†, *Tr.* 8 & 9 *G.* 2. *B. R.* three Weeks Abſence of the Servant was held to be purged by the Maſter's receiving him again: And the Court declared againſt Nicety in conſtruing theſe Settlements. In *Rex* v. *Inhabitants of Beccles*§, *P.* 17 *G.* 2. *B. R.* the Servant's working with other Perſons, by Conſent of the Maſter, did not vitiate his Settlement. And in *Rex* v. *Inhabitants of Goodneſtone*‖, *Tr.* 18 & 19 *G.* 2. the Servant went to the Herring Fiſhery three Weeks before the End of the Year, by Licence: Yet it was holden a good Service.

* *V.* 1 Sir *J. Strange*, 423. S. C. very well reported.

† *V. ante*, No. 14.

§ *V. ante*, No. 78.

‖ *V. ante*, No. 85.

As to the LIBERTY *of ending the Contract*, on forfeiting the Sixpences, and what was *underſtood* between the Maſter and the Pauper about it—he mentioned the Caſe of *Rex* v. *Inhabitants of Wincaunton*‡, in the laſt *Hilary* Term, where the *Apprehenſion* of the Pauper was holden to be quite immaterial.

‡ *V. ante*, No. 107.

As to his *Lodging*—He is ſtated to have lodged *in the Pariſh*: There was no Need that he ſhould lodge in *Palſor's Houſe*.

Here is an *actual Hiring for three Years*; and a *Service under it for one Year and a Quarter*. Therefore both the two Juſtices and the Seſſions have judged wrong, in holding "that *no* Settlement "was thereby gained."

Beſides (as Mr. *Ford*, who was on the ſame Side, obſerved) the two Juſtices removed him, *whilſt* he was *actually* IN *his Maſter's Service*.

The Counſel who now ſhewed Cauſe inſiſted on the *Liberty of quitting*, as vitiating the Settlement; alledging that the Hiring ought to be *abſolute* and *concluſive*.

OZLEWORTH *and* WOTTON UNDER EDGE.

Lord Chief Juſtice LEE—But *how* could the Juſtices remove him OUT *of the Service?* It appears that the Man was *actually* IN THE SERVICE, at the Time of the Removal.

Both HE and *Mr. Juſtice* WRIGHT thought the Orders muſt be quaſhed.

Mr. Juſtice WRIGHT obſerved that the Pauper had ſerved a Year and a Quarter.

The *two other Judges* (DENISON and FOSTER) were both ſilent.

Per Cur.

RULE *made* ABSOLUTE *to quaſh both Orders.*

V. Ante. pa. 48, and the Caſes referred to, at the Bottom of that Page.

Michaelmas Term

25 Geo. 2. 1751.

No. 109. Rex *v.* Inhabitants of Ilam.

Thurſday 7th *Nov.* 1751. A *retroſpective* HIRING for a Year, Part of which is *elapſed*, will not gain a Settlement. 1 *Wilſ. Rep.* 307. *Sayer's Rep.* 8. S. C. *N. B.* This is the *laſt* of the Settlement Caſes

TWO Juſtices made an Order for the Removal of *Thomas Smith*, *Mary* his Wife, and *John* their Son from *Tutbury* to *Ilam*, (both in *Staffordſhire:*) And, upon Appeal, the Seſſions confirmed that Order.

The Caſe ſtated was only this—*Rowe Port* of the Pariſh of *Ilam*, Eſq; hearing that the Pauper was a likely Boy to ſerve him as his Poſtilion, ſent to the Pauper's Father, to have the Pauper *upon Liking*. AFTER *the Pauper had ſerved* Mr. Port *eight Weeks on Liking*, Mr. Port *hired him for a Year to* COMMENCE *from the* BEGINNING *of the ſaid eight Weeks*. He ſerved Mr. *Port*, in the ſaid Pariſh of

reported by Mr. *Serjeant Wilſon*, and the *firſt* of thoſe reported by Mr. *Serjeant Sayer*.

Ilam,

Ilam, INCLUDING *the ſaid eight Weeks*, a *Year and ten Days*, and *no longer*. ILAM *and* TUTBURY.

On *Wedneſday* 26th *June* laſt, a Motion was made by Mr. *Gilbert*, to quaſh theſe Orders: For that this retroſpective Hiring is NO *Hiring* FOR A YEAR, within 3 & 4 *W. & M. c.* 11. It ought to have *commenced* from the *Time* of the Hiring.

RULE *to ſhew Cauſe.*

Upon ſhewing Cauſe on *Friday* 25th of laſt Month, the following Caſes were cited.—*Rex* v. *Inhabitants of Aynhoe**, *M.* 1727, 1 *G.* 2. *B. R.* where it was ſettled "that a Hiring for a Year and "a Service for a Year acquire a Settlement, ALTHOUGH the Hiring "and the Service are *not under the* SAME *Contract*." In the Caſe between the Pariſhes of *Lidney* and *Stroude*†, the firſt Hiring was *conditional* "for a Quarter of a Year, *upon Liking*; and IF they did "like each other, then to continue for a Year:" Yet it was holden a good Settlement; as they *did* like each other; and the Year's Service was *performed*. In the Caſe between the Pariſhes of *New Windſor* and *Chepping Wycombe* §, *Hil.* 8 *G.* 2. *B. R.* it was *uncertain* till the End of the Year, whether the Hiring *would be* for a Year; yet *happening* ſo in Event, it was holden good. The Maid was hired to go into Col. *Meyrick's* Service a Month *upon Liking*, at 5 *l.* a Year Wages; but was to go away on a Month's Wages or Warning on either Side. In the Caſe between *Wandſworth* and *Putney*, *M.* 15 *G.* 2. a *general* Hiring and a conditional Hiring *performed*, were both allowed to be good, to acquire a Settlement‖.

From which Caſes it was argued, that this was good, as a GENERAL *Hiring for a Year*; and alſo as a *conditional* Hiring, *completed by the* EVENT.

And here was plainly a *Service* for a Year: And there is no Pretence of any Fraud.

The Counſel for quaſhing the Orders (Mr. *Ford*, Mr. *Gilbert*, Mr. *Henley* and Mr. *Simpſon*) cited *Rex* v. *The Inhabitants of South Cerney**, *Tr.* 5 & 6 *G.* 2. where the Pauper was hired at a Statute-Fair the *Wedneſday* after *Michaelmas* to *Michaelmas* following, and the Court would not depart from the Act; but held it to gain *no* Settlement, though the Cuſtom of the Country was ſo. The Caſe between the Pariſhes of *Winford*† and *Chew Magna*, *M.* 22 *G.* 2. proves that Service *alone* will not do; unleſs the Hiring be AS *a Servant*.

* 2 Lord *Raym.* 1511.

† *V. ante*, No. 1.

§ *V. ante*, No. 7.

‖ *V. ante*, pa. 300, in No. 107. the Note upon this Caſe of *Rex* v. *Inhabitants of Putney*.

* *V. Seſſ. Ca.* Ed. 1750, Vol. 1. pa. 174, No. 156.

† *V. ante*, No. 98. *Rex* v. *Inhabitants of Wrinton*.

ILAM and TUTBURY.

Indeed if there be SUCH *a Hiring*, the Hiring and Service ſhall be *coupled together*; as in the Caſe of *Aynhoe**.

In *P.* 5 *G.* 2. between the Pariſhes of *Weſt Woodhay* and *Coombe*†, a Hiring from the Statute, which was only two Days after *Michaelmas*, to the next *Michaelmas*, was holden not good.

So that this *Retroſpect* will not do. Indeed if there had been a *general* Contract for a Year when he *firſt* came, it had been otherwiſe. But here he only came TO SEE IF HE SHOULD like and be liked. So that he was *not* a conditional Servant at the Firſt: There was NO *Contract* AT ALL.

To theſe Caſes it was replied by the Counſel who endeavoured to ſupport the Orders, that only the laſt Caſe of *Weſt Woodhay* and *Coombe*§, was applicable to the preſent: But in that, the ACTUAL *Service did* NOT COMMENCE till three Days after *Michaelmas*: Whereas *here*, the *actual* Service was CONCOMITANT *with the Hiring*.

THE COURT had ſome Doubt about the Validity of this *Hiring*; and therefore ordered it to ſtand for further Argument, by *one* ſingle Counſel on each Side: And in the mean Time, they ſaid, they would themſelves look into the Caſes which had been cited.

After it had now been accordingly again argued, by Sir *Richard Lloyd*, in Support of the Orders; and Mr. *Henley*, againſt them—

THE COURT held *this* Caſe to *differ* from all the former Caſes.

The ſole Queſtion is "Whether here be a *Hiring* FOR A YEAR." It is agreed that there *muſt* be a *Hiring for a Year, and a Service for a Year*, to gain a Settlement; and that a *Retroſpect* will *not* do. Which latter is the Caſe here: For the Lad came *upon Liking*; and *at that Time*, there is nothing ſtated of *a Hiring*; nor till eight Weeks after, during which eight Weeks both Parties were at Liberty.

Mr. Juſtice FOSTER thought the Caſes of *Lidney* and *Stroude*, and *Chepping Wycombe* and *New Windſor*, had carried the Matter as far as poſſible; and if they were new Queſtions he ſhould doubt of thoſe Reſolutions: But both theſe were Hirings for a Year, *previous* to the Service; and the Conditions were *performed*.

Mr. Juſtice FOSTER obſerved alſo, that the *ſafeſt* Way is to *adhere* ſtrictly to the *Words* of the Act of Parliament: For *Refinements* upon theſe Queſtions have produced Infinity of Queſtions and Difficulties.

* 2 Lord *Raym.* 1511.

†*V. Caſes of Settlement*, No. 107. No. 119, 120. *Foley*, pa. 150.

§*Hil.* 1718.

THE

THE COURT* held this to be *no* Settlement. Therefore *Per Cur.*

THE RULE muſt be made abſolute for quaſhing the Orders.

BOTH ORDERS QUASHED.

ILAM *and* TUTBURY.

* Mr. Juſtice *Wright* was not preſent, either now or on the firſt ſhewing Cauſe.

Rex *v.* Inhabitants of Weſt Shefford. No. 110.

Friday 8th Nov. 1751.

Reſidence for forty Days is neceſſary to *compleat* a Settlement by ESTATE. *Sayer's Rep.* 2. S. C.

TWO Juſtices made an Order for the Removal of *Catharine Bird* Widow, and *Lawrence* and *Mary* her Son and Daughter by *John Bird* her late Huſband deceaſed, from *Weſt Shefford* in *Berkſhire* to *Baydon* in *Wiltſhire:* And, upon Appeal, the Seſſions quaſhed that Order.

The Caſe ſtated is, in Subſtance, thus—*John Bird*, late Huſband of the ſaid *Catharine Bird* and Father of the ſaid *Lawrence* and *Mary*, being legally ſettled in *Baydon*, came by *Certificate* from *Baydon* to *Weſt Shefford:* And, during the Time that he reſided in *Weſt Shefford under ſuch Certificate*, he BECAME *beneficially intitled to a Leaſehold Eſtate of* FOURTEEN POUNDS *a Year*, ſituate in *Weſt Shefford*; which had been granted by the Truſtees of the late Sir *William Trumbull* to the Father of the ſaid *John Bird* and his Aſſigns for ninety-nine Years determinable on the Death of *John Bird* the Grandfather, the Wife of *John Bird* the Grandfather, and of this *John Bird* the Father. That the ſaid *John Bird* the Huſband of the ſaid *Catharine* the Pauper and Father of the ſaid *Lawrence* and *Mary*, being the *laſt ſurviving Life* in the ſaid Leaſe mentioned, *entered* upon the ſaid Eſtate on the 17th of *November* 1750, and was *poſſeſſed thereof*; and alſo *reſided thereon, from the Time he ſo entered to the Day of his Death*, which happened on the 15th Day of *December* 1750, *being* TWENTY-EIGHT DAYS *and no more*. That upon the Death of the ſaid *John Bird* the Father, (*his* being the *laſt* ſurviving Life as aforeſaid) the Eſtate under the ſaid Leaſe *determined*; and the ſaid Wife and Children of the ſaid *John Bird* had *no further Intereſt* whatever in the ſaid Leaſehold Eſtate. And that they or any of them have not gained any Settlement, other than what they derive under the ſaid *John Bird* the Huſband of the ſaid *Catharine* and Father of the ſaid *Lawrence* and *Mary*, by Virtue of the ſaid Leaſehold Eſtate as aforeſaid in the ſaid Pariſh of *Weſt Shefford*.

WEST SHEFFORD *and* BAYDON.

On *Monday* 17th of *June* laſt, a Motion was made by Mr. *Ford*, to quaſh this Order of Seſſions.

His Objection to it was, that though the Man when living was *not removable* (as he acknowledged) FROM this Eſtate of his *own*; yet, as he had never *reſided forty Days upon it*, neither he, if he were now living, nor his Family were removable TO it: For by the Act of 13 & 14 *C.* 2. *c.* 12. *ſect.* 1. the Removal can only be *to* the Place where the Pauper *has* RESIDED *by the* SPACE *of* FORTY *Days*.

RULE *to ſhew Cauſe.*

The Counſel who ſhewed Cauſe on the 31ſt of *October* laſt, made this ſhort Queſtion "Whether a *beneficial* Intereſt is not ſufficient "to gain a Settlement, WITHOUT *a forty Days Reſidence?*" And they argued that it *was* ſufficient.

His being a *Certificate*-man did not preclude him from THUS gaining a Settlement. The Caſe between the Pariſhes of *Burcleer* and *Eaſt Woodhay**, *P.* 5 *G.* 2. is a Determination "that a *Certifi-* "*cate-man* ſhall *not* be precluded from taking Advantage of a *bene-* "*ficial Intereſt accruing to him.*" On 43 *Eliz. c.* 2. no particular Time of Reſidence is limited.

* 1 Sir *John Strange* 163.

The Queſtion concerning *forty Days* ariſes only upon 13 & 14 *C.* 2. *c.* 12. which fixes the *Complaint* to be made within forty Days after coming to ſettle in a Tenement under 10 *l.* a Year.

[It does ſo: *V. ſect.* 1. But the ſame Section directs the Removal to be to the Pariſh where the Pauper was laſt legally ſettled for the Space of *forty* Days.]

This Man had reſided *a Month* in the Pariſh (*viz.* twenty-eight Days,) taking it even on 43 *Eliz.* And in the Caſe of *Weſton Rivers* and *St. Peter's Marlborough*, 2 *Salk.* 493, Lord Chief Juſtice *Holt* held "that before 13 & 14 *C.* 2. *c.* 12. was made, a *Month's* "Reſidence in a Pariſh made the Party an *Inhabitant.*" And the preſent Caſe is not within either the Words or Meaning of the Statute of 13 & 14 *C.* 2. *c.* 12. nor within any Determination upon it.

The Words relate to Perſons going about as *Vagabonds*, from Pariſh to Pariſh: Whereas this Man was an *Owner of Land* under a beneficial Leaſe.

The Meaning of this Act of 13 & 14 *C.* 2. appears from the ſubſequent Acts; particularly the 1 *J.* 2. *c.* 17. and 3 & 4 *W.* & *M.* *c.* 11.

The

The 1 *J.* 2. *c.* 17. *ſect.* 3. requires Notice in Writing to be delivered by the Perſon to the Pariſh-Officers, of his coming into the Pariſh; and directs that the forty Days be computed only from the *Delivery* of ſuch Notice: And the 3 & 4 *W.* & *M.* *c.* 11. *ſ.* 3. directs them to be computed from the *Publication* of ſuch Notice in the Church. The *Reaſon of the Notice* is that the Pariſh may, *within* the forty Days, make *Inquiry* about the Pauper, *in order to remove him.* But *here*, it is agreed, that he was ALWAYS *irremovable.* Conſequently, this Notice can not concern *him*, who *never could* be removed.

Neither is this Caſe within any of the *Determinations* upon 13 & 14 *C.* 2. *c.* 12.

In the Caſe of *Ryſlip* and *Harrow*, 8 *W.* 3. 2 *Salk.* 524. *pl.* 2. *per Holt* Chief Juſtice, "LIVING in a Pariſh where one has Land of his "*own*, *gains* a Settlement without Notice: For the Act of Parlia- "ment never meant to baniſh Men from the Enjoyment of their "own Lands." *No limited Time* of Living is fixed there: It is *general*—"living in a Pariſh." It ſeems as if that Caſe was *Freehold*: But in *M.* 12 *Ann.* between the Pariſhes of *Harrow* and *Edgeware**, it was extended to *Copyhold.* And it has been extended to the Huſband of an ADMINISTRATRIX *of a Leaſehold*: § *M.* 4 *G.* 2. between the Pariſhes of *Murſley* and *Grandborough*; the Man was only intitled as Huſband of an Adminiſtratrix in Truſt, and in Right of his Wife. In the Caſe of *Sundriſh* and *Hever*†, *Tr.* 7 & 8 *G.* 2. a beneficial Leaſe of ſmall Value, in the Hands of an Executor and Deviſee was holden not to be within the Act. In the Caſe of *Stanfield*‖, *P.* 16 *G.* 2. an Aſſignment of a Term of ſmall Value renders irremoveable.

Perſons having Intereſts of *Property* are *not within the Act*: Nor are they obliged to *give Notice* of their coming into a Pariſh.

The Counſel for *Weſt Shefford* argued that it does not clearly appear "that this Eſtate *was* the Pauper's *own* Eſtate." *Mere* POSSESSION can not give a Settlement; nor a *bare Deſcent*: For, at that Rate, a Man might be ſettled in many Pariſhes at one Time, if many Tenements ſhould deſcend to him together.

The Queſtion however, if it be taken "that it was *his own* "Eſtate," is "Whether a Man or his Family can be removed *to* "what was once his own Settlement; *after* his Intereſt in it is "expired; and which Intereſt was DETERMINED BEFORE *he had* "*reſided upon it forty Days.*"

They

* *Porteſcue's Reports* 310. and *Foley's Poor Laws* 294.

§ *V. Seſſions Caſes*, Edit. 1750, Vol. 1. pa. 133. No. 122. and 1 Sir *John Strange* 97.

† *V. ante*, No. 4.

‖ *V. ante* No. 72. pa. 209.

WEST SHEFFORD and BAYDON.

They argued in the Negative. And they *denied it to be true* (though it has often been asserted) "that being *irremovable*, and being *settled*, are CONVERTIBLE Terms."

Before the 13 & 14 *C.* 2. *c.* 12. Paupers could not be sent to any particular Parish. *This* Act (*Sect.* 1.) gives the Justices Power to send them to the Parish where they were last legally settled *for forty Days.*

But a Man can't be said to be settled forty Days, *till* he has REMAINED *forty Days.* And so it has been always understood, when the Matter has been under Consideration.

In *Tr.* 13 *G.* 2. between the Parishes of *St. Cleere** and *St. Nyotts* in *Cornwall*, it was so agreed by the Court, "That a Man can "not be sent *to* the Place where he had a beneficial Interest, though "even a Freehold, UNLESS he had resided forty Days upon it." In the Case of §*Sowton* and *Sydbury*, *H.* 12 *G.* 2. the only Question was "Whether the forty Days should be *successive*:" There was *no Doubt* but that *forty Days Residence* was ‖*necessary*. And in *M.* 11 *G.* 1. *Rex* v. *The Inhabitants of Wyley**——There also the Residence FOR *forty Days* was considered as the Point whereupon the Settlement turned. [*V.* Sir *J. S.* 609. *accord.*]

So it was also, in *Rex* v. *Inhabitants of Hasfield*§, *P.* 13 *G.* 2.

Therefore this Man gained *no* Settlement, *unless* he had *resided* forty Days: Whereas, in Fact, he resided only twenty-eight Days.

THE COURT thought pretty clearly, that forty Days Residence was necessary to gain a Settlement. They ordered it, however, to stand over. And upon it's being mentioned again, now,

Lord C. Just. LEE said he had looked a little into it: And all the Cases he could find, agreed in holding a FORTY *Days Residence* to be *necessary*, in order to found an Order of Removal TO a Place.

Mr. Justice DENISON—So I think. And I look upon this to have been settled, since the Case of *Mursley* and *Grandborough*‖: In which it was holden by Lord Chief Justice *Pratt*, Mr. Justice *Eyre*, and Mr. Justice *Fortescue*, that "any Person who has an Estate "of Freehold, Copyhold, or for Years, *by Act of Law* (as Descent, "Marriage, Executor, Administrator) or *Purchase*, may dwell up-

* *V. ante*, No. 42.

§ *V. ante*, No. 40.

‖ *V. ante*, pa. 128.

* *V.* 1 Sir *J. Strange* 608, *Ashbrittle* and *Wyley*.

§ *V. ante*, No. 49, pa. 148.

‖ *M.* 4 *G.* 2. *V. Sessions Cases*, Edit. 1750, Vol. 1. pa. 133, No. 122. and 1 Sir *John Strange* 97. both S. C. but not so full as a MS. *Report* in my own Hands; nor indeed at all coming up to the present Point in Question: Which mine *does*, and *agrees exactly* with the Representation of the Opinion of the Court here given.

" on it as his own; and is *not removable*; and gains a Settlement, " IF *he continues forty Days*; though under 10 *l. per Annum*: But " *he* MUST ABIDE *forty Days*, in order to gain a Settlement. And " Notice is not neceſſary; becauſe he is not removable from it. " But *Powys* held *contra*, as to a *Term for Years* under 10 *l. per* " *Annum* Value."* WEST SHEFFORD and BAYDON.

Mr. Juſtice FOSTER——I am of the ſame Opinion. The Caſe of *Weſton Rivers* in 2 *Salk.* 493. can be *no Authority*, to be ſure: The Month's Abode in a Pariſh relates to Aſſeſſments, which are made but once a Month.

* *Vide ante*, No. 16. *Rex v. Inhabitants of Dilwyn.* S. P.

Per Cur.—
Order of two Juſtices CONFIRMED:
Order of Seſſions QUASHED.

Rex *v.* Inhabitants of Marden. No. 111.

Saturday 23d *Nov.* 1751.

A Tenement rented by two Perſons *jointly*, at 16 *l. per annum*, will not gain a Settlement to either. *Sayer's Rep.* 9. S. C.

UPON *Saturday* the 15th of *June* laſt a Motion was made by Mr. *Jennings*, to quaſh an Order of Seſſions confirming an Order of two Juſtices for the Removal of *Thomas Newport*, *Mary* his Wife, and *Jane* and *George* their two Children, from *Barham* to *Marden*, both in *Kent*.

The Subſtance of the Special Caſe (wherein many particular Circumſtances were ſtated) was, That the ſaid *Thomas Newport and* one *Joſeph Dives* JOINTLY *hired* a Houſe and Land at *Marden*, for a Year, at 16 *l. per Annum* (which HAD BEEN *rented at twenty* POUNDS) and JOINTLY occupied the Houſe and tilled the Land for the ſaid one Year; and at their JOINT Expence tilled and ſowed the Land; and JOINTLY paid the Rent, *i. e.* each the like Sum.

In Support of this Motion, a Caſe was cited from a MS. Note of a reſpectable Gentleman taken at *Durham* Aſſizes, 6th *Auguſt* 1733, between the Inhabitants of *Croft* and the Inhabitants of *Gainford*; —which was a *joint* Taking of 14 *l. per Annum*, each paying ſeparately; the Landlord not caring to let to either ſingly. And the two Judges, (*Reeve* and Lord Chief Juſtice *Eyre*) to whom it was referred, held it *no* Settlement; becauſe the Statute requires the Perſon's taking a Tenement of 10 *l. per Annum* Value: Whereas *this* Practice of calling in a Partner in the Taking, would, if admitted *equivalent to a ſole* Taking, evade and fruſtrate the Statute.

RULE

MARDEN and BARHAM.

RULE *to ſhew Cauſe.*

Mr. *Hume Campbell* and Mr. *Knowler*, the Counſel who now ſhewed Cauſe, urged 1ſt, That EACH was *liable* for the WHOLE Rent. 2dly, That the true Rule to go by, is the VALUE of the Tenement; *not* the RESERVED *Rent:* (Which *Value* is *not here ſtated.*)

But even taking it as a Tenement of SIXTEEN POUNDS *per Annum* Value; yet the Pauper was *legally* the *Tenant of the* WHOLE: *Both* being *liable* to the Landlord, for the Rent. It is only taking a further Security for Payment of the Rent: Which ſhall not prevent gaining a Settlement. In *Tr.* 10 & 11 *G.* 2. between the Inhabitants of * *Butley* and *Benhall*, the Tenement was 14 *l. per Annum:* And the Landlord took a *Security alſo* for the Rent: Yet it was holden a good Settlement.

* *V. ante*, No. 33.

The very *Words* of the Statute of 13 & 14 *C.* 2. *c.* 12. expreſs the Caſe of a *joint* Taking. For they are—"Any Perſon OR *Per-*"*ſons* coming to ſettle in a Tenement under 10 *l. per Annum Va-*"*lue.*" And this Tenement has been let at *ſixteen* or *twenty* Pounds *per Annum*. So that this is expreſsly within the *Words* of that Statute.

Suppoſe the Rent had been 20 *l. per Annum* Value;—no Doubt it had gained a Settlement to *both*.

It may indeed be objected, "that at this Rate, *twenty* People "might be ſettled in *one* Tenement of 10 *l. per Annum.*"

But *ſuch* a Tranſaction might be ſet aſide and relieved againſt, under the Head of *Fraud*.

On the other Side, it was argued that this Caſe certainly is *not within* the *Intention* of the Act: For, as to the plural Word "*Per-*"*ſons*," it muſt be underſtood *reddendo ſingula ſingulis*; and never could be meant to give a Settlement to an *indefinite Number* of People, for hiring *one ſingle* Tenement of 10 *l. per Annum*.

As to *each* being Tenant of the *whole*—No Execution could be levied upon the whole, for the *Debt* of one only; nor could either *charge or diſpoſe of* more than one Moiety: And the ſame might be aſſerted of the *Stock* upon the Farm. So that the *Credit* and *Ability* of this Man was only *proportionable* to the MOIETY of the Taking.

In the Caſe of *Butley* and *Benhall*,—where the Landlord required and took a joint Security; the Tenant's *viſible Credit* was not thereby affected: He had the Credit of the Tenement, as to every Body but the Landlord; and ſtocked it; and uſed it. *This* Caſe is quite otherwiſe.

As

MARDEN and BARHAM.

As to *Value*—The HAVING BEEN *once* let at 20*l.* proves nothing. The *preſent* Rent, not the *paſt*, is the true Teſt of the VALUE of the Tenement.

This Practice would evade the End and Intention of the Act of Parliament, which meant "that no one ſhould thus gain a Settle-"ment, whoſe *Credit and Ability* were not equal to the hiring a "Tenement of the Value of ten Pounds *per Annum*."

Lord Chief Juſtice LEE—UPON THIS ORDER, either the Value of the Tenement hired by the Pauper is to be taken as *under* 20*l.* (*viz.* 16*l. per Annum* only;) or elſe, *no* Value of it is ſtated at all.

Now taking it as a Tenement of 16*l. per Annum* Value in the *whole*, (for ſo I muſt take it:)—The Meaning of the Word "*Per-*"*ſons*," in the Act of Parliament of 13 & 14 *C.* 2. *c.* 12. is only to include thoſe Perſons who *make Part of the* FAMILY *of the Inhabitant* who is the Renter or Taker of the Tenement; but can never mean to extend to an *indefinite Number* of Perſons *joining together*, to rent it.

Mr. Juſtice DENISON thought it an exceeding plain Caſe.

The Act of 13 & 14 *C.* 2. never intended that more than ONE Perſon ſhould gain a Settlement, by renting a Tenement of 10*l. per Annum* Value.

And whatever may be the Caſe, with Regard to the REMEDY againſt the Occupiers of ſuch Land ſo *jointly* taken by two Perſons; yet this Act of Parliament conſiders only the RIGHT: Which, clearly, is *only* to HALF.

Mr. Juſtice FOSTER held it to depend upon the *real Value* of the *Right and Intereſt* in the Land: Which in this Caſe is but HALF; and that half does *not* amount to the Value of 10*l. per Annum.*

THEY ALL agreed with the Opinion of the Judges upon the Northern Circuit, in the Caſe of *Croft* and *Gaiſford*, "That this "is not ſufficient to make a Settlement." That was this very Caſe: And both thoſe Judges were very knowing in the Affair of Settlements.

Vide poſt. No. 128. 184. 235. *accord.*

Per Cur. unanimouſly—

Both Orders QUASHED.

Hilary Term

25 Geo. 2. 1752.

Rex *v.* Inhabitants of Buckingham.

No. 112.

Thurſday 6th *Feb.* 1752.

The Son of a *Certificate* Man, born in the *certificated* Pariſh, is incapable of gaining a Settlement *there*, by *Hiring* and *Service*. *Sayer's Rep.* 11. S. C.

ON *Tueſday* 28th of laſt Month, Mr. *Ford* moved to quaſh an Order of Seſſions vacating an Order of two Juſtices; which Order of two Juſtices removed *John Langley*, *Mary* his Wife and *Elizabeth* their Daughter, from *Buckingham* to *Maid's Moreton* in *Buckinghamſhire*.

The Short of the Caſe was—That *Valentine Langley*, Father of *John*, came with a *Certificate*, with his Family, from *Maid's Moreton*, to ſettle in *Buckingham*; and, during his Reſidence there his Son *John* (the preſent Pauper) was *hired and ſerved* a full Year *in Buckingham:* Which *Hiring and Service* the Juſtices at Seſſions held to have *gained* him a Settlement in *Buckingham*; and therefore they quaſhed the original Order which removed him and his Family to *Maid's Moreton*.

HIS OBJECTION was, That neither a *Certificate-perſon* himſelf, nor *any of his Family* could gain a Settlement in the Pariſh where they reſided *under a Certificate*, UNLESS *by* ONE *of theſe* TWO *Methods, viz.* "Hiring a Tenement of 10 *l. per Annum* Value;" or, "Executing ſome annual Office in the Pariſh;" as is expreſsly declared and enacted by the Act of Parliament.

LEE *Lord Chief Juſtice* was abſent.

THE THREE JUDGES were clearly of the ſame Opinion; but ſaid they muſt hear the other Side: And therefore gave him a

RULE *to ſhew Cauſe*.

The Recorder of *London* was now to have ſhewn Cauſe.—But he ſaid the Adjudications were ſo * many and ſo ſtrong againſt him, that he would not attempt it.

* *V. ante*, No. 65. No. 88. No. 92. S. P.

Therefore *per Cur.*

Order of Seſſions QUASHED: And
Order of two Juſtices AFFIRMED.

Rex

Rex v. Inhabitants of Lockerly. No. 113.

Monday 10th *Feb.* 1752.

A mere *perſonal* Contract, for the *Uſe* and *Feeding* of Cows, is not a TENEMENT within the 13 & 14 *Car.* 2. *c.* 12. nor can a Settlement be gained thereby. *Sayer's Rep.* 21. S. C.

TWO Juſtices made an Order for the Removal of *Martha Edwards* the Widow of *Richard Edwards* deceaſed, and his five Children, *Jane*, *William*, *Ann*, *Benjamin* and *Martha*, from *Lockerly* to *Shireſield Engliſh*, both in the County of *Southampton*: Which Order the Seſſions, on Appeal, quaſhed upon the Merits.

Special Caſe—The ſaid *Richard Edwards*, his Wife, and the ſaid five Children, were ſettled in *Shireſield Engliſh*; but afterwards removed into *Lockerley*, and there entered into Articles of Agreement with one *John Merſh*, who then occupied a Meſſuage Farm and Lands in *Lockerly*: Which ſaid Articles are ſtated verbatim in the Order of Seſſions, and are in Subſtance as follows——

1ſt, *Merſh* covenants with *Edwards* (therein ſtiled Dairy-man) to let and demiſe to him his Executors Adminiſtrators and Aſſigns, and that they may peaceably poſſeſs and enjoy, a Dairy conſiſting of ſixteen Cows, with the Meſſuage or Tenement and Dwelling-houſe; and Feeding for the ſaid Cows on twenty-one Acres of Clover Ground, and thirteen Acres of Meadow Land, with the Afterleaze of a Mead: All which are ſituate in *Lockerly*, and are Part of *Caneſield* Farm in the Occupation of the ſaid *Merſh*; together alſo with the Run of the Backſide or Yard belonging to the ſaid Meſſuage or Tenement and the Arſhes belonging to the ſaid Farm, for the Feeding of Pigs; and alſo the Run of one Horſe, with the Cows aforeſaid; from the 2d of *February* next enſuing the Date, for one Year.

Alſo that *Merſh* ſhall, during the Term, allow to *Edwards* all the Sherl Wheat ariſing from the Corn growing on the Farm; and alſo provide for the Uſe of the Cattle (when wanted) five Tons of Hay; and for the ſame Feed of the Cattle, cauſe ten Acres of the Clover Ground and thirteen Acres of the Meadow to be laid up at *Candlemas-day*, and the other eleven Acres of the Clover at *Lady-day*; and alſo put the Meſſuage or Tenement and Dwelling-houſe and Premiſſes into Repair; and fetch the Goods, Neceſſaries, and Fuel of *Edwards* home to the ſaid Meſſuage or Tenement and Dwelling-houſe. And if the ſaid Cows ſhall not be delivered of their Calves by the 1ſt of *May* following, *Merſh* ſhall deduct and allow out of the Rent reſerved 2*s. per* Week for every Cow not ſo delivered, until ſhe ſhall be delivered; and alſo what may be reaſonable, for every Calf wanting to each Cow.

LOCKERLY *and* SHIREFIELD ENGLISH.

And laſtly, *Edwards* covenants to pay *Merſh*, for and in Conſideration of the Premiſſes, 3*l.* 5*s.* for every ſuch Cow as aforeſaid delivered to his Uſe and Poſſeſſion as aforeſaid payable Quarterly; except as above-mentioned.

That in Purſuance thereof, *Edwards* entered on and occupied the ſaid Dairy and Premiſſes, and lived in the ſaid Meſſuage or Tenement and Dwelling-houſe and Premiſſes, till his Death; which happened about the 7th of *October*. And that the Cows were fed in the Lands mentioned in the Articles: Part whereof was alſo fed at ſome Time in the ſaid Year, to wit, during the Time the Cows were foddered in the Yards belonging to the Premiſſes, during ſome Part of the ſaid Winter Seaſon, with the Sheep of *Merſh*: But the thirteen Acres of Meadow were never fed but by the ſaid Cows.

That after the Death of *Edwards*, the ſaid *Martha* his Widow continued in the Occupation of the Premiſſes, and held the ſame to the End of the Year, purſuant to the Articles. And that the ſaid Meſſuage or Tenement and Dwelling-houſe, DISTINCT *from the Dairy and the Reſt* of the Premiſſes in the ſaid Articles mentioned, were of the YEARLY VALUE, OF TWENTY-FIVE POUNDS *and no more*: And that the *Reſt* of the Premiſſes were of the *annual Value of* 50*l.* and upwards. And that neither the ſaid *Richard Edwards*, nor the ſaid *Martha* his Wife, nor the ſaid Children, did *any other Act* than as aforeſaid, to gain a Settlement.

On *Saturday* the 25th of laſt Month, a Motion was made by Mr. *Hume Campbell*, to quaſh this Order of Seſſions, and affirm the original Order. It was urged, that the Articles of Agreement, and what happened in purſuance of them, was *not* ſufficient to gain a Settlement to the Paupers in *Lockerley*.

He ſaid, the Caſe between the Inhabitants of *Minchin Hampton* and *Biſsley*, *Tr.* 3 & 4 *G.* 2. *B. R.* is the neareſt Caſe to this. It went off upon another Point *: But it was there holden "that the "*Feeding* of Land did *not* gain a Settlement."

RULE *to ſhew Cauſe.*

The Counſel who now ſhewed Cauſe, inſiſted that this was a TENEMENT under the Meaning and Intention of 13 & 14 *C.* 2. *c.* 12. And they argued both from the Preamble of the Act, and alſo from the liberal Conſtruction that has been always made upon it, in Favour

* It was for Want of an Adjudication. See this Caſe in *Seſſions Caſes*, Edit. 1750, Vol. 2. pa. 92. No. 93, and pa. 163, No. 132. and Sir *John Strange*, pa. 874. extremely Short. I have alſo a MS. Note of it, taken myſelf.

of

of Settlements. To prove that this Statute has been liberally conſtrued, they cited the Caſe of *Rex* v. *The Inhabitants of Sundriſh**, where Lord *Hardwicke* gave it a liberal Conſtruction, in determining that a Man could not be removed from his *own*, though a Leaſehold of ſmall Value.

LOCKERLY *and* SHIREFIELD ENGLISH.

* *V. ante*, No. 4. pa. 7.

A Tenement is every Thing that is holden. 1 *Inſt.* 4. *b.* 6 & 19: Where Profits *a prendre* are conſidered as *Tenements*. And this is a Profit *a prendre*, CONNECTED with an INTEREST *in the* LAND.

As to the Caſe of *Minchin Hampton* and *Biſiley*—It was never determined on †*that* Point. Beſides, the Taking was only from ‖ *Michaelmas* to *Candlemas*. It was not, nor could be laid down, "that taking the Paſturage of Land for a *Twelvemonth* would not "make a Settlement."

Though this Under-Leſſee has only the Herbage, he may bring an Action, or diſtrain. *Dyer* 285. *b.* The Grantee or Patentee of the King *de herbagio foreſtæ* may maintain a *Clauſum fregit*, or diſtrain Cattle Damage-feaſant upon the Land.

Tithe is a *Tenement*; though it be no Ownerſhip of the Soil.

If it be objected "That by this Method, *two Settlements* might "be gained by Virtue of the *ſame Premiſſes*; one, by the original "Tenant; the other, by ſuch his Leſſee;"—the Anſwer is—So it may; provided the original Tenant leaves himſelf *above* the Value of 10*l. per Annum*. If a Property is *capable of being divided out*, (as for Inſtance, the Orchard itſelf, and alſo the Paſturage of an Orchard,) no Doubt if the Value of *each* Leſſee was 10*l. per Annum*, it would gain a *Settlement to each*: For there is no Sort of Fraud in this.

On the Contrary it was argued that this is *not a Leaſe of the* LAND; but a *mere* CONTRACT *for the* MILK *of* ANOTHER *Man's Cows*. The POSSESSION *even of the* Cows *is* NOT *to be delivered* to *Edwards*. And the *Recompence* ariſes *in Proportion* to the Cows which *ſhall* CALVE. The Reſt of the Agreement is only *how* the Grantor ſhall FEED *his Cows*, in order to make the more or better Milk; and about the Running of the Grantee's Horſe and Pigs.

So that this is *nothing like the* HIRING of a *Dairy*, or *Dairy Farm*: Nor is a Profit *a prendre out of Lands*. Renting the *Apples* in an Orchard for a Year would *not* gain a Settlement. Therefore this is

† My Note of it ſays that the Orders were quaſhed upon *another* Exception.

‖ My Note is——"And the ſame Year took, in the ſaid Pariſh of *Biſiley*, *the Paſture* of a "Piece of Land, from *All Saints Day* till *Candlemas* following, and paid 12*s.* for the ſame; "(the ſaid Piece of Land being of the yearly Value of 6*l.*")

NOT

LOCKERLY *and* SHIREFIELD ENGLISH.

NOT *a* TENEMENT within the Act of Parliament: It is a Profit FROM *the* CATTLE: Not FROM *the* LAND.

N. B. All the Counsel agreed it to be a *new* Case, hitherto undetermined;

And the only Question to be "Whether this was a TENEMENT "within 13 & 14 *C.* 2. *c.* 12. *sect.* 1."

Lord Chief Justice LEE was absent.

Mr. Justice WRIGHT took Notice that the Words "*let* "and *demise*" were indeed used; and so also was the Word "*Dairy:*" But the "*Dairy*" is immediately after explained to mean "*sixteen Cows.*" The LAND seems to have *remained to Mersh:* For *he* was to lay it up, at such a Time.

The only Question is "Whether this can be said to be a "TENEMENT, under 13 & 14 *C.* 2, *c.* 12."

Now a TENEMENT *must* LIE IN TENURE; and must *relate to* LAND.

Whereas this Contract *relates to the* Cows. The PASTURE *of the* GROUND, generally, is *not let*; but only the *Feeding of sixteen* Cows: He could not feed *other* Cattle upon it. The Value of this Meadow is not stated.

It seems to me to be only an Agreement for the *Use of the* Cows, and the *Feeding of* THEM: And it is merely personal. Here is no *Interest in the* LAND that passes, or was intended to pass.

He thought it a very clear Case.

The Case of *Minchin Hampton* was a different Case; and was not determined upon the Point of renting the Pasture of the Land; but quashed for want of an *Adjudication.* (However, he said that * IF that Case *was* an Agreement "*for the* PASTURE only of the Land," he should doubt of it.)

Therefore the Order of Sessions ought to be quashed; and the original Order confirmed.

Mr. Justice DENISON *and Mr. Justice* FOSTER (LEE *Chief Justice* absent) were clearly of Opinion that this Agreement was merely for a *personal* Thing, *the Use of the* Cows; and has nothing to do with the *Land.* Consequently, it can never come within the Intention of the Word "Tenement;" upon which a Man is to be settled.

Per Cur. unanimously—

Order of Sessions QUASHED:
Original Order AFFIRMED.

* See 1 Sir *John Strange* 874. And I have looked into the *Order* in that Case in *Minchin Hampton*, and the Words are—"And the same Year, took, in the said Parish of *Bisley*, *the* "PASTURE *of a Piece of Land*, from *All Saints Day* till *Candlemas* following."

*** The

*** The Editor of the *Seſſions Caſes* 1750 has been very Careleſs in relation to this Caſe of *Minchin Hampton*: Which he has given in two different Parts of his 2d Volume; but has *very improperly tranſpoſed* them. In Page 163, he has reported the Motion of *Eaſter* Term 3 G. 2. when Mr. *Steevens's firſt* Objection was *over-ruled*. In pa. 92. he had *before* reported the *ſubſequent* Objection taken by Mr. *Steevens* in the *following* Term, *Trin.* 3 & 4 G. 2: Which was an Objection to the *original* Order for Want of an Adjudication; *upon* which Objection, *both* Orders were *quaſhed*. In Truth, he does not ſeem to perceive that they are different Branches of the ſame Caſe; Nor has he given them the ſame Name.

Eaſter Term 25 Geo. 2. 1752.

No Determination of this Sort.

Trinity Term 25 & 26 Geo. 2. 1752.

Nor in this Term.

Michaelmas Term 26 Geo. 2. 1752.

Nor in this Term.

Hilary Term 26 Geo. 2. 1753.

Nor in this Term.

Eaſter Term

26 Geo. 2. 1753.

No. 114.

Rex v. Inhabitants of Eakring.

Friday 1ſt *June* 1753.

TWO Juſtices made an Order for the Removal of *George Witworth* from *Eakring* to *Selſon:* And, upon an Appeal, the Seſſions diſcharged that Order.

An *Apprentice* may, after the Death of his *Maſter*, gain a Settlement by *Hiring* and *Service* for a Year. *Sayer's Rep.* 88. S.C.

Special Caſe—George Witworth, a poor Child of *Eakring*, and put out by the proper Officers, by Indentures regularly executed, and allowed by two Juſtices of Peace, to *Richard Tomlinſon* of *Eakring*, to *ſerve him as a* PARISH APPRENTICE TILL *he ſhould accompliſh his* AGE OF TWENTY *Years*, ſerved his Maſter under theſe Indentures, for ſeveral Years, at *Eakring*. About three Years before he attained twenty Years of Age, he ran away from his Maſter; and loitered, for ſome Time, about the Country. In *June* 1749, *Tomlinſon*, the Maſter, died: And at *Martinmas after*, the ſaid *Witworth hired himſelf as a Servant* to *William Flint* of *Selſon* for a Year, and ſerved him that Year at *Selſon*; and at *Martinmas* 1750, hired himſelf for *another* Year, and *ſerved that Year alſo* with the ſaid *William Flint* at *Selſon*; and received all his Wages, to his own Uſe, the EXECUTORS *of Tomlinſon taking* NO NOTICE *of him:* But the ſaid *George Witworth did* NOT *attain his Age of* TWENTY *Years*, till *January* 1750. And the Seſſions being of Opinion "that the ſaid *G. W.* did NOT, by Virtue of ſuch Hiring "and Service at *Selſon* under the Circumſtances aforeſaid, gain a "Settlement in the ſaid Pariſh of *Selſon*," they reverſe and diſcharge the original Order.

Upon *Friday* the 18th of laſt Month a Motion was made by Mr. *Taylor White*, to quaſh this Order of Seſſions: For that *after* the Maſter's *Death*, the Apprentice was *at Liberty* to hire himſelf; and as he was *hired for a Year* and *ſerved a Year* in *Selſon*, his legal Settlement was *there*.† "*Apprenticeſhip* is a PERSONAL *Truſt* between "the Maſter and Servant; and is DETERMINED *by the* DEATH *of*

† *Vide Poſt.* No. 242.

"EITHER

EAKRING and SELSON.

"EITHER *Maſter or Apprentice.*" *Eyre* ſays this, in 1 *Salk.* 66. *Rex.* v. *Peck, Mich.* 10. *W.* 3.

Mr. *Wilmot* was now to have ſhewn Cauſe againſt quaſhing the Order of Seſſions: But he candidly owned that he *could* NOT *defend it.*

He then objected to the *original* Order. To *this* Order he made two objections—

* 1ſt, That the PARISH of *Eakring* is at firſt mentioned in it; and then it goes on—"And has lately intruded himſelf into *your ſaid* "TOWN of *Eakring.*" So that it is uncertain whether *Eakring* be a *Town* or a *Pariſh*; which are quite different Things.

* Order affirmed, though it mentions the ſame Place firſt as a *Pariſh*, and then as a *Town*; and afterwards alledges that the Pauper is likely to become chargeable THERE.

In anſwer to this Objection, Sir *John Otway*'s Caſe, 2 *Vent.* 31. was cited; where a Fine and Recovery of Lands *in Ribton* was holden to ſerve for Land which lay in the Pariſh, but out of the Vill of *Ribton.*

Wilmot replied that this Caſe was not to the preſent Purpoſe: For the Judges there went upon the Foundation, "That common Re-"coveries were not to be overthrown by nice Conſtructions *&c.*"

2d Objection to the original Order—The Pauper was only alledged to be likely to *become chargeable* THERE. Now "chargeable "THERE," does not alledge that the Pauper was "likely to become "chargeable to *the Pariſh:*" Which it is neceſſary that the Order ſhould do.

(The *Chief Juſtice* being gone—)

THE THREE JUDGES held the firſt Objection to be over nice; and over-ruled it. And

Mr. Juſtice DENISON and *Mr. Juſtice* FOSTER thought the ſame, concerning the ſecond Objection: Though *Mr. Juſtice* WRIGHT took it that the Word "*there*" did not neceſſarily import that the Pauper was likely to become ſo TO *the* PARISH.

But *per Cur.*—

Order of Seſſions QUASHED:
Original Order AFFIRMED.

Trinity Term

26 & 27 Geo. 2. 1753.

No. 115. Rex *v.* Inhabitants of Hanbury.

Thurſday 28th *June* 1753.

TWO Juſtices made an Order for the Removal of *Richard Allen* and *Anne* his Wife from *Hanbury* in *Worceſterſhire* to *Tardebigg* in *Warwickſhire:* And, upon an Appeal, the Seſſions quaſhed that Order.

Abſence of the Servant, at the *Beginning* or in the *Middle* of the Year, is *purged* by the Maſter's receiving him again. And a Juſtice's *Diſcharge* without an Hearing, Order in Writing, or reaſonable Cauſe, is a mere Nullity. *Sayer's Rep.* 100. S. C.

Caſe.—The Pauper was hired for a Year, from *Michaelmas* to *Michaelmas:* He *came* THREE *Days after the former Michaelmas*; and *ſtayed* ONE *Day after the latter*; and was *abſent*, at different Times *near* a FORTNIGHT, for which Abſence 6*s.* 6*d.* were abated in his Wages. This Service was in *Tardebigg*. From thence, he went to *Hanbury*; where he was hired for a Year, and ſerved three Quarters; and then *married* to a Woman with Child. Of this, his Maſter complained to a Juſtice of Peace.—The Juſtice *thought* the Matter complained of to be a ſufficient Cauſe for the Pauper's being diſcharged; AND ALLOWED *of his Diſcharge*; but made *no* Order IN WRITING touching the Matter. The *Maſter* thereupon *diſcharged* him, againſt the Pauper's Conſent.

Upon *Tueſday* 14 of *Nov.* laſt, a Motion was made by Mr. *Ingram*, to quaſh the Order of Seſſions: And a Rule was made to ſhew Cauſe.

On ſhewing Cauſe on *Monday* 28th of the ſame Month (of *Novem.*) Mr. *Bathurſt*, for the Inhabitants of *Tardebigg*, argued that the Settlement was in *Hanbury*; at leaſt, NOT *in Tardebigg*.

To prove "that it was *no* Settlement in *Tardebigg*," he cited the following Caſes.

* 1 Sir *John Strange* 423.

P. 7 *G.* 1. *B. R. Rex.* v. *Inhabitants of Iſlip** was an Abſence of four Days to ſee a ſick Mother; and ſix Days, ſick; and going away three Days before the End of the Year, having aſked Leave, and for a reaſonable Cauſe. All this indeed did not vitiate the Settlement: For the Servant *continued* in the Service, in Point of *Law*; though he *actually* left it three Days before his Time expired.

† *V. ante*, No. 20.

But in *M.* 9 *G.* 2. *B. R. Rex.* v. *Inhabitants of* † *Caſtlechurch* there was a Hiring for a Year; and the Service was quitted, by *Conſent*

ſent of the Maſter, *twelve Days before the End* of the Year: And it was holden to be NO Settlement.

HANBURY *and* TARDEBIGG § *V. ante*, No. 55.

And *Rex.* v. *Inhabitants of Newton* §, *M.* 14 G. 2. ſhews that it muſt be a *complete* Year.

As to the Settlement in *Hanbury*—The Juſtice COULD NOT *diſcharge* the Servant *againſt his Conſent*: For it appears by, and was agreed in *Bro. Abr.* Title *Laborers*, *pl.* 27. "That the Maſter can "not diſcharge his Servant within the Time &c. UNLESS *he agrees* "*to it*; no more than the Servant can depart, without the Agree-"ment of his Maſter."

The Act of Parliament of 5 *Eliz. c.* 4. *ſect.* 5. does not make this Marrying during his Service to be a reaſonable and ſufficient Cauſe of Diſcharge; ſuch as a Juſtice of Peace may allow to be ſo, for putting away a Servant *without* his own Conſent. And in the Caſe between the Pariſhes of *Farringdon* and *Wilcot*, *P.* 2 *Ann.* 2 *Salk.* 529. A Servant who marries during his Service *may* ſerve out his Time: And *if he does*, it ſhall *gain a Settlement*, by the Opinion of *Holt* and *Gould*, againſt *Powell*.

Therefore he muſt be conſidered, in Point of Law, AS *having continued* in the Service to the End of the Year: For the Diſcharge by the Juſtice was abſolutely *void*.

Lord Chief Juſtice LEE ſaid the great Queſtion is upon the CAUSE *of Diſcharge*; "Whether *that* be ſufficient." But as the *Cauſe* and *Manner* of Diſcharge were a new Point, he thought it not fit for the laſt Day of a Term.

ADJOURNED.

Mr. *Batburſt* now proceeded, and argued—1ſt, That *no* Settlement was gained in *Tardebigg*; becauſe he did *not* ſerve *there* a *whole* Year. Abſence either at the *Beginning* of the Year or juſt before the *End* of it will *vitiate* the Service. 2dly, That his *Marriage* is NO *Diſſolution* of the Contract, in *Hanbury*. To which Point, he cited 2 *H.* 4. 13. *b.* Caſe 3. A Man may marry my Servant, a Feme Sole; but can not take her out of my Service*. He cited alſo *Fitz-Herbert's Abridgement*, Title *Barre*, *pl.* 214.

In the Act of 3 & 4 *W.* & *M. c.* 11. *ſect.* 7. the Word "UN-"*married*" only relates to the *Time* of the HIRING. And ſo it was held by *Holt* and *Gould*, againſt *Powell*, in the Caſe between the Pariſhes of *Farringdon* and *Wilcot*.

* The Book ſays—"*juſques que il l'ay eſpouſe.*" *V. Fitz. N. B.* 375. *n.* "If a Female Ser-"vant marries, ſhe can not be taken from her Huſband during Coverture." But ſee Lord Ch. Juſt. *Hale*'s Edition 392. in the Notes—"that this was determined otherwiſe: And it is unlaw-"ful to take her during the Eſpouſals." *V.* 2 *H.* 4. 13. *b.* (the Caſe here referred to, by Lord Ch. Juſt. *Hale.*)

HANBURY and TARDEBIGG

The case between the Parishes of *Clent* and *Elmley Lovat*, *Mich.* 1 *G.* 1. *Foley's Poor Laws* 160. proves fully "that intermediate "Marriage does *not* prevent a Person hired for a Year from gaining "a Settlement." And *Sessions Cases*, *Edit.* 1750. 8. C. says, "An "Hiring and Service gains a Settlement, *notwithstanding* Marriage "within the Year." And then it goes on thus: "*N.* in Case of "*Farington*, one hired for a Year in *Farington* marries; Two "Justices *remove out* the Servant, by Consent of the Master, to "*Wilcote* in *Oxfordshire*, *within the Year*. Upon Appeal of *W.* "this Fact stated. Order confirmed: But *King's Bench* QUASHED "it."

3dly. Mr. *Bathurst* observed that the Justice has made NO *Order in Writing*. Now 5 *Eliz. c.* 4. § 5. directs the Justice to "hear "and order;" which implies an Order in *Writing*, as All their Orders are: Whereas here is *no* Order *at all*, as far as appears by the State of the Case.

Mr. *Ingram* on the other Side (for the Inhabitants of *Hanbury*) said, There are two Questions in this Case—

1st. "Whether the Pauper gained a Settlement in *Tardebigg*:"

2d. "Whether He gained a subsequent One in *Hanbury*."

These Questions will depend on the Construction of 3 & 4 *W.* & *M. c.* 11. and 8 & 9 *W.* 3. *c.* 10. *sect.* 4.

First—The little *Absence of* 3 *Days* at first, and a *Fortnight* afterwards, for which there was a *Deduction of Wages*, will NOT *destroy* the Settlement in *Tardebigg*. To prove this, He cited *P.* 7 *G.* 1. *Rex* v. *Inhabitants of* * *Islip*; and the Case between the Inhabitants of *Eaton* and *North Wheatly*, † *Tr.* 8 & 9 *G.* 2. *Rex* v. *Inhabitants* of ‖ *Castlecburch*, *M.* 9 *G.* 2. and *Rex* v. *Inhabitants of* § *Beccles*, *P.* 17 *G.* 2.

Here the *Service* CONTINUED during the *Whole* Year: For He was a Servant from *Michaelmas*; and the Absence for the three first Days was *dispensed with* by the Master's *receiving* Him.

It is not necessary to be *actually* in the Service. *Bro. Abr.* Title *Laborers*, *pl.* 7. 11. sufficiently prove that a Person may be a proper and true Servant *without that*.

Second point—(the subsequent Settlement in *Hanbury*—) He admitted that the *Marriage* did not make the Contract VOID; but insisted that it made it VOIDABLE, at the Election of the *Master*. The *Servant* is not at Liberty to *depart*; but the Master may DISCHARGE for this Cause.

Mr. *Bathurst*'s Cases out of the Year-Book are determined upon the *Old Statute of Laborers*, (23 *Ed.* 3.) which is repealed by 5 *Eliz.*

* 1 Sir *John Strange* 423.
† *V. ante*, No. 14. pa. 47, 48. This Case, and the Principles on which it goes, are in Point.
‖ *Ante*, No. 20. pa. 68.
§ *Ante*, No. 73. pa. 230.

5 *Eliz. c.* 4. § 1. The 5th Section of this Act is in the disjunctive—No perſon ſhall put away his Servant before the End of his Term, or Servant retained according to that Act depart from his Service, "Unleſs it be for ſome *reaſonable Cauſe or Matter*, OR be allowed "before two Juſtices *&c*, or one at leaſt, to whom any of the "Parties grieved ſhall complain: Which ſaid Juſtices or Juſtice "*&c*, ſhall have and take upon Themſelves the *Hearing and Or-*"*dering* of the Matter between the Maſter and Servant according "to the Equity of the Cauſe."

Therefore the Juſtice was the proper Judge of this matter, and *has done every Thing* that the Statute requires.

An Order to diſcharge a Servant needs not be *in Writing*. *Bro. Abr.* Title *Laborers*, *pl.* 38. A Servant may be diſcharged by his Maſter, by Parol. The Contract itſelf was made by Parol: And therefore it may be diſſolved by Parol. And this ſame Juſtice who ordered the Diſcharge, made the Order of Removal.

I do not deny "that a married Servant *may* gain a Settlement:" But I ſay that it is in the *Option of the Maſter*.

The Caſe of *Farringdon* and *Wilcot*, in 2 *Salk.* 529. is an Authority for *Us*. It is adjudged "That the Juſtices cannot annul "the Agreement between Maſter and Servant, UNLESS it be *upon* "*Complaint of the Maſter*." There the Maſter did *not* complain; Nor was there a previous Application to a Magiſtrate for his Diſcharge, before the Order of Removal.

As to the Caſe of *Clent* and *Elmley Lovat*—It was there laid down "that the Marriage did not deſtroy the Settlement where "the Servant *continued*." But it does not follow "That the "*Maſter* can not *diſcharge* his Servant on Marriage."

If then the Pauper Himſelf be removable—To *what* Place *muſt the* WIFE *be ſent?* The Anſwer is plain: She muſt certainly be ſent to TARDEBIGG, the Settlement of the Huſband: For He has not yet gained any at *Hanbury*, before the End of the Year's Service there.

Therefore it follows, that He muſt be ſent thither too: Otherwiſe, it would be a temporary Divorce.

Ld. Ch. J. LEE and the THREE OTHER JUDGES thought the firſt Point (about the Settlement in *Tardebigg*) ſufficiently anſwered by the Caſes cited by Mr. *Ingram*.

In the Caſe of *Rex* v. *Inhabitants of Iſlip*, There were a great many Abſences; and One of them was 3 Days before the End of the Term, *contrary* to the Will, and after the *Refuſal* of the Maſter; and the Servant did *not return* afterwards; and an *Allowance* was made

HANBURY and TARDEBIGG

made in the Wages for the Time He was abſent: And yet it was holden to be a *good* Settlement.

Therefore this Caſe is in Point, as to every Thing, but the Difference of the 3 Days being at the *Beginning*; which does not make any *real* Difference at all: For SERVICE has *not* been taken ſtrictly, though *Hiring* has.

The 3 Days Abſence of the Servant in the Beginning of his Service was *purged* by the Maſter's *receiving* him.

2d Point. As to the DISCHARGE of the Servant—That ought to be done by the Juſtice AS *a Magiſtrate*, that is, BY *an* ORDER. It is an *Act of Juriſdiction* in the Juſtice; and therefore ought to be *in Writing*.

The Act of 5 *Eliz. c.* 4. § 5. requires a *ſufficient Cauſe* of Diſcharge, to be allowed by One or more Juſtices of Peace, on *hearing and ordering* the Matter.

Now here does not appear to be any HEARING: And it is certain, there is NO ORDERING. Nor, as Mr. Juſtice *Wright* thought, is there ANY *reaſonable* Cauſe: For what Objection is the *Marriage*? 'Tis no *Miſdemeanour*: And the Juſtice cannot diſcharge but FOR *Miſdemeanour*.

Therefore He *is not* diſcharged; *nor* (by Mr. Juſtice *Deniſon* and Mr. Juſtice *Foſter*) *can* He be thus diſcharged *againſt his own Conſent*. Conſequently, the Settlement at *Hanbury goes on*; and is his laſt *legal* Settlement.

Per Cur. unanimouſly—

The laſt legal Settlement is in *Hanbury*: And therefore They AFFIRMED the *Order of Seſſions* which had QUASHED the *Original Order* made for removing the Paupers from *Hanbury* to that Part of *Tardebigg* which is in the County of *Warwick*.

No. 116. Rex *v.* Inhabitants of Acton Beauchamp.

Friday 29th *June* 1753.

A Purchaſe for *more* than 30*l.* in reſpect of which the Purchaſer is *rated* to the Land Tax, will gain a Settlement; though Part of the *Purchaſe Money* be borrowed upon Mortgage.

MR. *Nares* moved to quaſh an Order of Seſſions which diſcharged an Order of Two Juſtices made for the Removal of *Thomas Bittington*, *Sarah* his Wife and their 4 Children, *Mary*, *William*, *Sarah*, and *Thomas*, from *Acton Beauchamp* in *Warwickſhire* to *Cradley* in *Herefordſhire*.

Caſe ſtated—The Pauper, about 17 Years before the making of the Order, *purchaſed* an Eſtate in *Cradley*, (but lived then in *Acton Beauchamp*,)

Beauchamp,) and paid 38 *l.* as the Conſideration for it. That he *borrowed* 24 *l. of the money*; and then *mortgaged* the premiſſes, *for ſecuring the ſame*. That He never lived upon the Eſtate Himſelf; but ſet it to one *Criſp*, at 1 *l.* 18 *s.* 6 *d. per Annum*; The Landlord to pay the Land-tax, and the Tenant all other Taxes. That *Criſp* rented the Premiſſes of the Pauper for 14 Years: During all which Time, the *Pauper was* RATED *to the Land-tax*; but the Tenant paid it, and was *allowed it again* by the Landlord out of the Rent. That the Pauper *reſided in Cradley*, 7 Years of the Time He was Owner of the Premiſſes; though *not upon his own Eſtate*. That He has *lately ſold it*, and then paid off the Mortgage. Whereupon the Seſſions vacate the Order of the two Juſtices.

Mr. *Nares* ſaid this was ſo clear a Caſe that there was no Need to cite any Authorities.

A RULE was made to SHEW CAUSE: And

On *Wedneſday* 11th of *July*, It was MADE ABSOLUTE without Defence.

V. ante, No. 17, No. 18.

Perhaps I may be blamed for inſerting this *undefended* Caſe; Eſpecially; as the Volume would have otherwiſe concluded with a very pretty Caſe, and very well defended: But I choſe to mention it, leſt any Gentleman might have taken a Note of the Motion to quaſh the Order; and not have known what afterward became of it.

Michaelmas Term 27 Geo. 2. 1753.

No Determination of this Kind.

Hilary Term 27 Geo. 2. 1754.

Nor in this Term.

ON

ON *Wedneſday* Evening 3d of *April* 1754, LORD CHIEF JUSTICE LEE was taken with an Apoplectic Fit; and died early on the following *Monday* Morning, the 8th.

He was a Gentleman of moſt unblemiſhed and irreproachable Character, both in public and in private Life; amiable and gentle in his Diſpoſition; affable and Courteous in his Deportment; chearful in his Temper, though grave in his Aſpect; generous and polite in his Manner of Living; ſincere and deſervedly happy in his Friendſhips and Family-Connexions; and to the higheſt Degree upright and impartial in the Diſtribution of Juſtice.

He had been a JUDGE of the Court of *King's Bench* almoſt twenty-four * Years; and for near ſeventeen of them had *preſided* ‖ in it. In this Station, the Integrity of his Heart and the Caution of his Determinations were ſo eminent, that they probably *never will*, perhaps never *can* be exceeded.

* He firſt took his Seat upon the Bench, as puiſné Judge, on the 15th of *June* 1730.

‖ *V. ante*, 105.

He was peculiarly Maſter of that Sort of Knowledge which is the Subject of the foregoing Sheets.

Eaſter

Eaſter Term

27 Geo. 2. 1754.

NO Caſe of this Kind was *determined* within this Term. The two Caſes next following were before the Court in this Term: But they did not receive a Determination till *Trinity* and *Hilary* Terms.

On the ſecond Day of this Term, *Thurſday* the ſecond of *May* 1754, SIR DUDLEY RYDER, his Majeſty's Attorney General, was ſworn in LORD CHIEF JUSTICE of the Court of KING'S BENCH; And on *Monday* the 6th he took his Place in Court.

Trinity Term

27 & 28 Geo. 2. 1754.

Rex *v.* Inhabitants of Whitchurch. No 117.

Monday 1ſt *July* 1754.

Executing an *Annual* Office in a BOROUGH, which does not include the *whole*, but only a *ſmall Part* of

TWO Juſtices made an Order for the Removal of *George Humbet*, from *Whitchurch* to *Overton*: And, upon Appeal, the Seſſions diſcharged that Order.

Special Caſe ſtated——That the Pauper, about thirty Years ago, went to live in the *Burrough* of *Overton*; where he rented a Tenement of 5*l.* a Year; and ſoon after, EXECUTED THE OFFICE *of* BAILIFF *or* ALE-TASTER *for the ſaid* BURROUGH: To which

a PARISH, will gain a Settlement. *Sayer's Rep.* 134. S. C.

WHITCHURCH *and* OVERTON.

Office he was *nominated* AND SWORN *at the Court-Leet* held for the ſaid Burrough, *and* EXECUTED *the ſame* from the *Lady-day* Court to the *Lady-Day* Court following. That the ſaid Office conſiſts in inſpecting Weights and Meaſures within the ſaid Burrough, and in warning the Jury to ſerve at the Court-Leet there; and that the ſaid *George Humber* had Weights and Scales delivered to him; and that he once went about, to examine the Meaſures of Ale and the Weights within the ſaid Burrough, and warned the Jury. It alſo appeared, that the ſaid *George Humber* was nominated to the Steward of the ſaid Court, by the Bailiff who ſerved the ſaid Office the Year preceding; and was then *ſworn* by the Steward into the ſame Office, at the ſaid Court-Leet: And that the ſaid *Burrough* is NOT *one fifth or one ſixth Part of the ſaid* PARISH of *Overton*; and the Bailiffs have never executed any Authority over the *Pariſh* AT LARGE; and that GREAT PART *of the ſaid Pariſh knew nothing of* SUCH OFFICE; and that new-married Men and New-comers were frequently nominated for the ſake of Colt-Ale.

On *Friday* 17th *May* laſt, Mr. *Gould* moved to quaſh the Order of Seſſions, and confirm the original Order of two Juſtices.

He argued that the executing this annual Office *in* the Pariſh, in the Manner ſtated, gained him a Settlement in *Overton*. To prove this, he cited the Caſe between the Pariſhes of *St. Maurice* and *St. Mary Calendar* in *Wincheſter* * *P.* 8 *G.* 2. *B. R.* and alſo the Caſe there cited of *The Queen* v. *The Inhabitants of St. Mary's Reading*, *H.* 9 *Ann.*

* *V. ante*, p. 27. No. 10.

Ale-Taſter is an ancient and known Officer; as appears from *Kitchin's Juriſdiction of Courts*, 22. 94: (For Ale-*Connor* is the ſame with Ale-*Taſter*.) And the ſecond Objection taken in *R. x* v. *Inhabitants of Fittlewo: th* †, *M.* 18 *G.* 2. *B. R.* is in Point for the Pariſh of *Whitchurch*.

† *V. ante*, p. 240. No. 81.

RULE *to ſhew Cauſe.*

Mr. *Hume* and Mr. *Norton* were to have now ſhewn Cauſe: But having been informed that the Caſe cited, of *Pulborough* and *Fittleworth*, was in Point; (which was confirmed by Mr. Juſtice *Wright*;) they ſaid they would not offer to overturn a *ſettled eſtabliſhed* Determination; wherein they thought that, in Point of Decency and Reſpect to the Court, they ought to acquieſce.

Whereupon the Order of Seſſions was QUASHED;
And the Order of the two Juſtices AFFIRMED.

Michaelmas

Michaelmas Term 28 Geo. 2. 1754.

No Determination of this Kind.

Hilary Term

28 Geo. 2. 1755.

Rex *v.* Inhabitants of St. Botolph's without Biſhopſgate. No 118.

ON *Monday* 14th *May* 1753, a Motion was made by Mr. *Hume Campbell* and Mr. *Lawſon*, to quaſh an original Order of two Juſtices and an Order of Seſſions confirming it, for removing *Eleanor Kinley* the Wife of *James Kinley*, and her Child *Mary Ann* by him, (aged about two Years) from *St. John's Wapping* to *St. Botolph's without Biſhopſgate*.

Special Caſe——*Eleanor* (the Pauper removed) had a Settlement of HER OWN *before Marriage*, by Service to Mr. *Fitz Gerald*, in the Pariſh of *St. Botolph without Biſhopſgate*. Then ſhe MARRIED *an* IRISH *Sailor*; *who had* NO *Settlement, as far as ſhe knows of*; and who is ALIVE, as ſhe believes; having two months ago, heard "that he was ſo." The Seſſions hold *St. Botolph's* (the WOMAN'S FORMER Settlement) to be HER *legal Settlement*, and remove *her and her Child* THITHER, *as to* HER *laſt legal Settlement*.

The Objection made to this Order by Mr. *Hume Campbell* and Mr. *Lawſon*, was—That it is a ſettled Point "that if a Woman *having* "a Settlement marries a Man who has *none*, her Settlement is SUS-"PENDED DURING COVERTURE." And the REASON why ſhe can not be removed, during the Coverture, to her Maiden-Settlement,

Wedneſday 29 *Jan.* 1755. The Maiden Settlement of a *married Woman* is not SUSPENDED *during Coverture*: But *ſhe* and her *Child* may be removed thither, if the *Huſband* have no Settlement of his own. *Sayer's Rep.* 198. S. C.

ST. BOTOLPH'S *and* ST. JOHN'S WAPPING.

ment, is—" becauſe it would, *otherwiſe*, be in the Power of the " Juſtices to DIVORCE a Man from his Wife." *Rex* v. *Inhabitants of Norton* *, *H.* 12 *G.* 2. 1738, on an Order for the Removal of *Ellen Birmingham* from *Stretford* to *Norton*, was the Caſe they cited and relied upon, as being directly in Point.

* *V. ante*, V. 1. pa. 122. No. 39.

RULE *to ſhew Cauſe.*

On *Saturday* 2d *June* 1753, Mr. Serjeant *Hayward*, who was for the Seſſions-Order, moved to enlarge the Rule; the Juſtices, as he ſaid, finding great Inconvenience in the NOW *eſtabliſhed* Determination; (meaning the abovementioned Caſe of *Ellen Birmingham:*) And he ſaid, it was contrary to former Determinations which he would undertake to ſhew.

The RULE *was accordingly* ENLARGED.

On *Saturday* 18th *May*, 1754, the Serjeant proceeded, in Support of this Seſſions-Order, and of the Poſition—" That the MAIDEN-" *Settlement* is NOT *ſuſpended*, but REMAINS." He cited the Caſe of *Archibald Player's* Wife †, which was ſo determined in the Time of Lord Chief Juſtice *Parker*, in *M.* 12 *Ann. B. R.*—between the Pariſhes of *Dunſfold* and *Wilſborough Green*; and *Sarah Etherington's* Caſe §, in *M.* 3 *G.* 2. *Foley*, 251. *B. R.* between *St. Giles's in the Fields* and *St. Margaret's Weſtminſter*; and alſo *Rex* v. *Inhabitants of Weſterham* ‖, *H.* 12 *G.* 1. *B. R.*—*Elizabeth Pinchen's* Caſe; whoſe Huſband was *born* in *Wiltſhire*, but NO SETTLEMENT of HIS *could be found:* And two Juſtices removed her and her Child to *Weſterham*, being the Place of her Settlement before Marriage. The Seſſions quaſhed this Order. But *this* Court quaſhed the Order of Seſſions; and reſolved " that whether the Huſband be *living* or *dead*, ſignifies no-" thing: For, *unleſs it appears that he has a Settlement*, the Wo-" man muſt be ſent to the place of *her* Settlement before Marriage.

† See this Caſe, very imperfectly reported in *Forteſcue* 314, and in *Seſſions Caſes*, Edit. 1750. Vol. 1. pa. 56. No. 53. but much better in *Foley* 284. and *Caſes of Settlements*, pa. 22. No. 31.

§ This Order related only to the Daughter: The Huſband was dead. *V. Foley* 287. *Caſes of Settlements*, pa. 76. No. 98. and *Seſſions Caſes*, Edit. 1750. Vol. 1. pa. 104. No. 97.

‖ *V. Foley* 288. S. C. But *Rex.* v. *Inhabitants of Chidingſtone* was the *right Name* of this Caſe.

" For, ſuppoſing the Huſband was born upon the high Seas, or in " *Ireland*, &c. if the Woman might not be ſent to the Place *of her* " *Settlement before Marriage*, ſhe might be ſtarved." [I take this Caſe from a Manuſcript of my own.]

St. Botolph's and St. John's Wapping.

As to the Caſe of *Rex* v. *Inhabitants of Norton*—it was S. P. and he owned, was determined otherwiſe. But

The new Act concerning Vagrants [17 *G.* 2. *c.* 5.] anſwers one of the Arguments in that Caſe, and takes off much of the Force of the other. And the Conſequences of that Determination will be more miſchievous, than thoſe which the Court apprehended from the contrary. It renders, at leaſt, all theſe Women Vagrants; and puts it in their Power to go into *any* and *every* Pariſh where they pleaſe, and demand Relief, *toties quoties*.

Mr. *Mc Pheadris* argued to the ſame Effect; and obſerved that the Caſe in *Tr.* 1 *G.* 1. *B. R.* between *Hanway* and *Marſton* Pariſhes * is a Determination in *Favour* of the Maiden Settlement.

* See it cited very generally in *Rex* v. *Inhabitants of Norton*, abovementioned. *V. Forteſcue's Reports* 217. *Hanway* and *Mauton*.

Mr. *Hume Campbell*, *contra*—argued for the *Suſpenſion* of the Woman's Settlement during her Coverture; and relied on the Determination of *Rex* v. *Inhabitants of Norton*, as a ſettled and eſtabliſhed Reſolution on this head, which was not now to be ſhaken. And in Anſwer to what had been urged in Relation to the Act concerning Vagrants, he ſaid that this Queſtion turns *ſingly* upon the Statutes concerning *Removals*; and not upon the *Vagrant*-Acts: *They* have no concern with it.

Lord Chief Juſtice RYDER † obſerved that it could not be an *univerſal* Rule " that the LAST *Determination* of a Point could " not be departed from:" Becauſe the *ſame* Argument would have been of *equal Force* againſt THAT *very* Determination, which varied from *preceding* ones. And as the Caſes upon *this* Queſtion have been *variouſly* determined, he thought this would be a proper Time to determine it FINALLY.

† He became Chief Juſtice at the Beginning of *Eaſter* Term laſt. *V. ſupra*, under that Term, pa. 365.

And he deſired that the Court might be informed particularly (by the Search of the Parties concerned) of *theſe* Caſes which had been mentioned, and any *other* Caſes (if there were any more) on this Head: but the preſent Caſe needed not to be *argued* any more.

CUR. ADVIS.

HIS LORDSHIP now delivered the Reſolution of the Court, (including that of Mr. Juſtice *Wright*, who was abſent.)

The

St. Botolph's and St. John's Wapping.

The general Queſtion is. "Whether this Woman and her Child, "or either of them, are ſettled in the Pariſh of *St Botolph without* "*Biſhopſgate*, which was the *Maiden-Settlement* of this *Eleanor* "*Kinley*, *before* her Marriage with *James Kinley* (Huſband to the "Pauper *Eleanor*, and Father to her Child *Anna Maria*;) who is "an *Iriſh* Sailor, WITHOUT *any known Settlement*, and is *ſtill* "ALIVE."

And we are of Opinion "that *both the Mother and Child* are ſettled in the *Place of her* MAIDEN *Settlement viz.* in *St. Botolph's.*"

The Caſe of the *Mother*, and the Caſe of the *Child* may perhaps be thought to deſerve a ſomewhat *diſtinct* Conſideration.

As to the *Mother.*

As to the Caſe of the MOTHER—I ſhall conſider it,

1ſt, *Independently of the Authorities* cited; and

2dly, As it *ſtands on the Authorities.*

Firſt—*Independently* of the Authorities.

The Act of 43 *Eliz. c.* 2. had *two* Defects; *viz.* the Want of due *Regulations and Employment* of the Poor *in their proper* Pariſhes; and the Want of *Reſtraint* from *going into other* Pariſhes.

Now, in order to Remedy theſe Defects, the Act of 13 & 14 *C.* 2. *c.* 12. was made: Which enumerates the ſeveral Caſes of the Defects of the former Law concerning the Settling of the Poor; and then provides a Remedy for them.

THIS Act *firſt created* the RIGHTS OF SETTLEMENTS *in Pariſhes.* The *ſubſequent* Acts I will not now meddle with: For *this* brings the Caſe of the *Wife* to a Point. *Her* Caſe may be conſidered within this Act *only*; *viz.* "Whether ſhe HAD a Settlement "in *St. Botolph's, or not.*"

Now, *St. Botolph's* was, certainly, *once* her Settlement; and would ſo *continue* TILL ſhe ſhould have *gained another:* And it appears "that ſhe NEVER HAD *gained* ANOTHER ſince."

The *firſt* and the *laſt* of theſe Poſitions are *clear.*

The *only* Queſtion therefore is on the *ſecond*; *viz.* "Whether "the former Settlement in *St. Botolph's*, was DETERMINED, be-"fore ſhe is ſuppoſed to have gained a new one."

But this former Settlement *could not ceaſe*; but would CONTINUE *during Life*, or TILL a *new* one ſhould be *gained:* There is *no* Caſe where a Settlement *ceaſes* by any *other* Method. A Man *can not give away*, or *releaſe*, or *ſuſpend* his Settlement: For the *Public* is concerned in it, as well as himſelf.

The Chief Argument made Uſe of *e contra*, is from the conſtant Rule of a *Wife's acquiring* a Settlement from her *Huſband*; or a *Child* from it's *Parent*; as in the Caſe of *St. Giles's Reading.*

But

But the Caſe * of *St. Giles's Reading*, is *not ad idem:* For here, ſhe gets *no* Settlement from her Huſband; there, ſhe *did*. So that the *Reaſon* of that Caſe *fails* here. Indeed *if* a Man HAS *a Settlement*, his Wife and Children will be intitled to it; and *their* Settlement muſt be the *ſame with his:* But *if* HE *has* NONE *they* can then have none *from* him; But the *Wife's* MAIDEN-*Settlement* CONTINUES *and remains as it was.*

St. Botolph's and St. John's Wapping.

* *V. Seſſions Caſes*, Edit. 1750, Vol. 2. pa. 116. No. 112. 2 Lord *Raym.* 1332, 1 Sir *J. Str.* 580.

It is objected "that this will *ſeparate* the Wife from her Huſband "and amount (in Effect) to a *Divorce.*"

But they are ſeparated *already:* For he has left her. And indeed, ſince he has *no* Settlement of *his own*, he may *as well* go to her *in her own Maiden-Settlement, as in any other* Place.

It may be alſo ſaid, "that this will be a *Hardſhip upon the Pariſh* "where the Woman was ſettled before her Marriage; as it will "oblige that Pariſh to maintain the Woman after her Coverture, "when they ought to be diſcharged of her."

But that is *no Hardſhip* upon them, *if* her former Settlement was *never determined:* Becauſe, as long as that continues, it is *their Duty* to maintain her.

Secondly—I will conſider this Queſtion as it ſtands *upon the* CASES *and* AUTHORITIES.

There are *five* Caſes with regard to the Wife; *viz.*

1ſt, *Regina* v. *Inhabitants of Wilſborough Green, M.* 1 *G.* 1. *in Point*, both as to the *Mother* and *Child* †.

2d, Between *The Inhabitants of Upbottery* and *Dunkſwell, H.* 12 *Ann* §. where both Orders were quaſhed; becauſe it did not appear that the Huſband was dead: But *Parker* Ch. J. ſaid "that IF "the Huſband had been dead, ſhe ought to be ſent to her Maiden-"Settlement."

3d, The Caſe ‖ between the Pariſhes of *St. Giles's* and *St. Margaret's, M.* 3 *G.* 2. *B. R.*

4th, *Rex* v. *Inhabitants of Chidingſtone* ‡, *H.* 12 *G.* 1. *B. R.* where it was held "That, whether the Huſband be *alive* or *dead*,

† It was *M.* 12 *Ann. Surrey: Regina* v. *Inhabitants of Wilſborough Green*; concerning the Settlement of *Ann Blaze.*

§ *Hil.* 12 *Ann. Devonſhire: Regina* v. *Inhabitants of Dunkſwell*; concerning the Settlement of *Elizabeth Baker* otherwiſe *Flower*, and her Son *William.*

‖ *V. ante* (*Sarah Etherington's* Caſe) pa. 368.

‡ *V. ante*, (under 18th *May.*) pa. 368.

"the

St. Botolph's and St. John's Wapping.

"the Wife ought to be ſent to the Place of *her* Settlement *before* "*Marriage.*"

5th, Between the pariſhes of *Hanway* and *Marſton*. * *Tr.* 1 *G.* 1. *B. R.* All the Family were Vagrants. The *Mother* was ſent to the Place of her *Maiden* Settlement: And the Order was confirmed as to *her* (though not as to the Children.)

*It was *Trin.* 1 *G.* 1. *Berks: Rex.* v. *Inhabitants of Marſton*; concerning the Settlement of *Margaret Taylor* and her Children.

Now four of theſe Caſes are in Point "That the Wife's Maiden-"Settlement REMAINS, UNLESS ſhe acquires another:" And the 5th is pretty nearly ſo.

BUT a Caſe has indeed been cited and much relied upon, as a *direct* Authority to the *Contrary*——*Rex* v. *Inhabitants of Norton*, *H.* 12 *G.* 2. The Wife of *Gerard Birmingham*, a Native of *Ireland*, had been ſettled at *Norton*; and was removed from *Stretford* to *Norton:* Which Order was quaſhed. [*V.* ante, pa. 122. No. 39.]

Now I frankly own that I *can not reconcile this Caſe* to the *others* which I have mentioned. It does not appear upon this Caſe of *Stretford* and *Norton*, whether theſe *other* Caſes *were cited*; or *what* was the *particular Reaſon* of the Reſolution. However *if* they were cited and over-ruled, WE may, for the *ſame Reaſon*, overrule *that* Reſolution: For, upon the *laſt* Determination, if the preceding Caſes do appear to *claſh*, we muſt determine upon the WEIGHT of the ſeveral Caſes that appear to us. And *if* the *other* Caſes were *not* cited, we may reaſonably ſuppoſe that the Caſe was not fully conſidered.

As to the *Child.*

Second Point. One thing remains to be conſidered; which is the Caſe of the *Child*; and which may ſeem to have ſome *little Difference* from the Caſe of the *Mother*: But the *Reaſon* is on the ſame Side.

A legitimate Child has a Right to its *Parent's* Settlement. Here, the *Father* has NONE: Therefore the *Mother's* muſt take Effect. Indeed the Father's ſhall take Place FIRST: But *if* he has *none*, the *Mother's* comes next.

FOUR of the cited Caſes include the *Children*; whoſe Removal is of two diſtinct Kinds: For, as to NURTURE *alone*, The Child always goes with the Mother, under a certain Age.

In 1 Lord *Raym.* 395. there is a Caſe of *Rex* v. *Inhabitants of Wangford in Suffolk*, and *Carthew* 449, 450, S. C. that "Nurſe-"Children under the Age of ſeven Years may be *ſent with their* "*Mothers*, for *Nurture*; but muſt be *maintained* by their proper "Pariſh." And there are many other Caſes to the ſame Purpoſe.

ON

On the *whole*, we are ALL of us of Opinion, (and my Brother WRIGHT concurs with us,) "that the *Mother's Maiden-Settlement* "REMAINS; having NEVER *been determined*, but only as it were, "*ſuſpended during the Time that ſhe continued under the Power and* "*Protection of the Huſband, and was maintained and ſupported by* "*him.*"

St. Sotolph's and St. John Wapping. *Vide poſt*, No. 253. *accord.*

ORDERS AFFIRMED.

Rex *v.* Inhabitants of Sudbury. No. 119.

The ſame *Wedneſday*, 29th *January* 1755.

TWO Juſtices made an Order for the Removal of *John Bladon* and *Mary* his Wife, and *Ann*, *Mary*, and *William* their Children, from *Uttoxeter* in *Staffordſhire* to *Sudbury* in *Derbyſhire*: And, upon Appeal, the Seſſions confirmed that Order.

A Certificate is diſcharged by *Removal*; after which, a Settlement may be gained in the certificated Pariſh, by *Apprenticeſhip*. *Sayer's Rep.* 200. 8, C.

Caſe—One *Thomas Bladon* and *Bridget* his Wife and their Children were CERTIFICATED *from Sudbury to Uttoxeter*, on a 5th *March* 1728. *Thomas Bladon* died there. Then *Bridget* the Widow, and the preſent Pauper JOHN BLADON (the Son of the ſaid *Thomas* and *Bridget*) became *actually chargeable* in 1731; and were then *removed and* SENT BACK *from Uttoxeter to Sudbury*, together with a Copy of the Order of the Juſtices, reciting the ſaid Certificate. *Bridget* died, at *Sudbury*. On the 18th of *Auguſt* 1732, the ſaid *John Bladon*, the preſent Pauper, was *bound by Indenture*, as a Pariſh-Apprentice from the ſaid pariſh of *Sudbury*, to *Edward Bladon of Uttoxeter* aforeſaid; and *ſerved out* his Apprenticeſhip there; and has done no Act ſince, to gain a Settlement.

The two Juſtices removed him, by their ſaid Order, AS *a Certificate-Perſon*: Which Order, being appealed from, is confirmed; the Juſtices at Seſſions *conſidering the* CERTIFICATE *as* STILL *in Force*; though it was contended "that it had been SATISFIED by "the ſaid former Removal of the Pauper and his Father and Mo-"ther from *Uttoxeter* to *Sudbury*; and that the Pauper had *gained* "*a Settlement in Uttoxeter under the ſaid Indenture of Apprentice-*"*ſhip.*"

On *Saturday* 22d *June* 1754, Mr. *Hume Campbell* moved to quaſh theſe Orders. He argued that this is NOT *a Caſe within* 9 & 10 *W.* 3, *c.* 11. (which confines Certificate-Perſons to TWO *Methods* ONLY of gaining a Settlement.)

SUDBURY and UTTOXETER

He was ſupported by Mr. *Pratt*: And they argued, that he did NOT *come into Uttoxeter by Certificate*; there having been a TOTAL END of the CERTIFICATE *of the Father and Mother* in 1731; it having been COMPLEATED *and* DISCHARGED BY *the Removal of all thoſe that were then in Being, of them and their Family,* BACK *to Sudbury,* upon their becoming actually chargeable at *Uttoxeter*. And they inſiſted, that AFTER *that, John Bladon,* the Son, was become *ſui Juris*; and was no longer to be conſidered as a certificated Perſon.

They agreed that there was NO *Caſe* to be found on this Point.

RULE *to ſhew Cauſe.*

On the laſt Day of laſt *Trinity* Term, *Mr. Gilbert* and Mr. *Gould* ſhewed Cauſe againſt quaſhing theſe Orders.

The Queſtion will depend upon the two Certificate-Acts of 8 & 9 *W.* 3. *c.* 30. and 9 & 10 *W.* 3. *c.* 11.

The Acts of 12 *Ann. c.* 18. (which prevents gaining Settlements by ſerving or being Apprentice to Certificate-Perſons, whilſt under ſuch Certificate,) and 3 *G.* 2. *c.* 29. *ſect.* 8. (for Proof of Certificates, and for reimburſing Overſeers *&c.*) are *further* Proviſions to indemnify Pariſhes againſt Certificate-Perſons being chargeable to them.

As to this Pauper's being *ſui Juris*——the Act of 8 & 9 *W.* 3. *c.* 30. ſpeaks of Certificate-Perſons and their *Children* (though born in ſuch Pariſh) being removed back, when actually become chargeable. [*V. ſect.* 1.]

This Pauper went out of the Pariſh of *Sudbury*, indeed for a Year; But he *returned*, and was then *again* UNDER *the* ORIGINAL *Certificate*.

He was therefore, by 9 & 10 *W.* 3. *c.* 11. *confined* to the *two* Methods of gaining a Settlement thereby ſpecified; *viz.* Renting a Tenement of 10*l.* a Year; or, Executing an annual Office in the Pariſh.

An *after-born* Child, by an after-married Wife, *though emancipated*, ſhall yet be conſidered AS *a Certificate*-Perſon. P. 15 *G.* 2. *B. R.* between the Inhabitants of *Thornford* and *Sherborne* *.

* *V. ante*, pa. 182, No. 65, *accord.*

Second Point——The Order of Removal to *Sudbury*, in 1731, *could* NOT *deſtroy* the Certificate. The Caſe in 2 *Salk.* 535, *pl.* 25. between the Inhabitants of *Honiton* and *St. Mary Axe* was cited,

ted, for the *Court's Opinion* about *Certificates*—— "that they *conclude* "the Pariſh who *gives* them, *againſt all the World.*"

Sudbury *and* Uttoxeter

And, to ſhew how obligatory Certificates were upon Pariſhes, a Caſe was cited by them, in which, they ſaid, even *Baſtard*-Children of the Certificate-Perſon were holden to be *within the Certificate*: *Rex* v. *Inhabitants of Headcorn*, *Tr.* 19 *G.* 2. *B. R.* Reſolved that the Pariſh giving the Certificate were bound to receive the Children, THOUGH *illegitimate* *.

* *V. ante*, pa. 253, No. 86.

A Certificate of this ſolemn Nature can not be *deſtroyed* by an Order of Removal: Nor ought it to be ſo, in the Nature and Reaſon of the Thing; for, the *Cauſe* of the Certificate *exiſts*; and when this Pauper returned to the Pariſh of *Uttoxeter* the ſecond Time, they were BOUND *to receive him.*

IF *Part* of the Family only had been removed from *Uttoxeter* to *Sudbury*, the Certificate had *ſtood* as to the *Reſt*. Here, the Pariſh of *Sudbury* came to defeat their own Act.

The Words of the Act of 8 & 9 *W.* 3. *c.* 30. "WHENEVER, "*&c.*"—import "*toties quoties:*" And it does not ſay "that the "Certificate *ſhall* LOSE *its Force*, AFTER *a Removal.*" And *no Caſe* is cited, to ſhew "that it *does.*"

Mr. *Hume Campbell* and *Mr. Pratt*, the Counſel on the other Side (for quaſhing the Orders,) agreed with their Adverſaries, as to their *Principles*, and did not diſpute their *Caſes*; but inſiſted that neither the one nor the other were *applicable* to the *preſent* Caſe.

The *preſent* Queſtion is *merely* upon the Conſtruction of 8 & 9 *W.* 3. *c.* 30. WE ſay, "The Certificate HAS *had its Effect*; the "Engagement *has been performed*; and this *John Bladon*, the Pau-"per, *did* NOT come to *Uttoxeter* this *ſecond* Time, BY *Certifi-*"*cate.*"

According to *their* Argument, a Certificate *would be* EVERLASTING: It would include *Natorum natos et qui naſcentur ab illis.*

Lord Ch. Juſt. RYDER ſaid, that as this was a new and extenſive Queſtion, it may be proper to look minutely into the Acts of Parliament and the Caſes cited: and therefore he ſhould chooſe to ſuſpend his Opinion till the next Term.

RULE ENLARGED.

In *Michaelmas* Term laſt, on *Friday* 8th *Nov.* Mr. *Gould*, who was for ſupporting the Orders, deſired leave to inform the Court of an additional Caſe, relating to the Subject in Queſtion, between the In-

SUDBURY and UTTOXETER.

habitants of *Sowerby* and *Halifax* *, *Hil.* 24 *G.* 2 *B. R.* And he ſtated the Caſe to the Court.

But Mr. *Hume Campbell* and Mr. *Pratt*, *contra*, alledged, and ſeemed, in the Opinion of the Court, to make out, that it bore no Similitude to the Caſe now under the Conſideration of the Court.

*See it below (in the Reſolution of the Court) cited at large by the Chief Juſtice.

CUR. ADVIS':

And now, (immediately after delivering the Opinion of the Court in the preceding Caſe of *Rex* v. *Inhabitants of St. Botolph's*,)

Lord Chief Juſtice RYDER obſerved that this Caſe alſo ſtood for the Opinion of the Court: And he declared it as follows, or at leaſt to the following Effect.

This Caſe will depend upon the Conſtruction of 9 & 10 *W.* 3. *c.* 11.

By a former Act, of 8 & 9 *W.* 3. *c.* 30. every Certificate-Perſon was to be irremovable, *till* chargeable; and then and not before, NOT *having* OTHERWISE *gained a legal Settlement*, was to be removable. On *this* Act ALONE, it is clear that the preſent Pauper could NOT *have been removed:* For this Caſe is expreſsly *within* the Exception of it; an Apprenticeſhip GAINING *a Settlement*, under 3 & 4 *W.* & *M.* *c.* 11. *ſect.* 8.

But the Act of 9 & 10 *W.* 3. *c.* 11.—ſaying that "No Perſon "or Perſons *whatſoever* who ſhall come into any Pariſh by any ſuch "Certificate, ſhall be adjudged, *by* ANY *Act whatſoever* to have "gained a Settlement therein, UNLESS by renting a Tenement of "10*l.* a Year, or executing ſome annual Office, in ſuch Pariſh;" would exclude *no* Certificate-Perſons at all, *unleſs* it excludes ſuch as this Man is, *if* he remains bound by the Certificate.

The Queſtion therefore is "Whether he is to be conſidered *as* "a Certificate-Man, *now*, ſince *this* Act of 9 & 10 *W.* 3. *c.* 11."

We are all of us of Opinion, (and I include my Brother *Wright*, who agrees with us,) "That the Removal of the Pauper *John Bladon*, by an Order of two Juſtices, from *Uttoxeter* to *Sudbury*, did RESTORE him *as fully* as if there had been *no* Certificate at all: The Certificate was, if I may ſo ſay, *functus Officio*, after this Order of Removal *back again* to the Pariſh which gave it. It can have it's Effect BUT ONCE: And therefore, *after* this Removal back again, it can have *no further* Effect.

The INTENTION *of the Certificate* is to *ſecure* the Pariſh which receives ſuch Certificate-Perſons, from being obliged to ſupport them

them and their Family, *in caſe* they ſhould become chargeable. Now *this Event did fall out:* And they *were* accordingly removed *back again.*

But the Point now under Conſideration is, "What Effect this "Certificate ſhall have, AFTER this Removal back again, and AF-"TER it has once *had* it's intended Effect."

It was urged, and a Caſe * was cited in order to ſhew, "that "AFTER-*born* Children ſhall be included in their Father's Certifi-"cate." And this is *right:* And it would be a great Hardſhip upon the Pariſh which is *bound to receive* the Certificate-Perſon, if it were *not* ſo.

* *Thruſford* and *Sherborne* Caſe above-mentioned. See it, *ante*, No. 65.

But the Reaſon of the Thing proves the *Reverſe*, in the *preſent* Caſe. For the Ground and Reaſon of Certificates is †, that many poor Perſons who are chargeable to the Places where they live, merely for want of Work, *may* and *would* maintain themſelves in *other* Places where their *Labour is wanted*, without being burthenſome to *any* Place. Whereas the continuing them for ever under the Certificate would *diſcourage* Pariſhes from giving Certificates to ſuch of their Poor whoſe Labour might be uſeful and neceſſary elſewhere; becauſe, if this Method of holding them down to their old Certificate was to prevail, they would be chargeable with them *in infinitum*. And the Legiſlature is ſo far from thinking of the Certificate *continuing* in Force *for ever*, that it has taken care to *ſecure the Pariſh* from Inconveniences that might ariſe to them by granting the Certificate; by prohibiting the Pauper's Return to the Pariſh under a Penalty.

† *V.* Preamble of 8 & 9 *W.* 3. *c.* 30.

The Certificate has been compared to a Fine, and to a Deed indented; and has been argued to be an *Eſtoppel* againſt the Pariſh which gave it. And the Counſel for the Pariſh of *Uttoxeter* cited the Caſe of *Honiton* and *St. Mary Axe*, in 2 *Salk.* 535. in order to ſhew "that Certificates conclude and eſtop the Pariſh which gives "the Certificate, *againſt* all the World."

But WHAT does it *eſtop? Nothing* BUT *what is* INCLUDED IN *the Certificate; nothing* FURTHER.

And *if* there WAS ſuch a Reſolution as has been mentioned, in *Trin.* 19 *G.* 2. *Rex* v. *Inhabitants of Headcorn*——"That the Pa-"riſh giving the Certificate was bound to receive the Children, tho' "illegitimate ‖;" it muſt have been upon the Foot of their being *included* in the Certificate.

‖ *V. ante*, pa. 253, No. 86.

It has been ſaid, "that the Order of Removal of this Man back "again from *Uttoxeter* to *Sudbury*, was *in Affirmance* of the Certifi-

cate;

SUDBURY and UTTOXETER

"cate; and that the Conſtruction contended for *would* DESTROY "the Certificate."

But it does *not* DESTROY *it*, any otherwiſe *than by* SATISFYING *it*. And there is no Abſurdity in its being *ſatisfied as to* ONE, and remaining in *Force, as to* ANOTHER; any more than there is in one *Covenant* in a *Deed* being good, and *another* Covenant in the *ſame* Deed, bad. The contrary Determination would, indeed be *abſurd*: For it would make Certificates *continue* FOR EVER.

There was a Caſe * mentioned by Mr. *Gould*, after the Argument, ſaid to be between the Inhabitants of *Sowerby* and *Halifax*, in *Hilary* Term 24 *G.* 2. where the Father of the Pauper, being ſettled in *Halifax*, came *by Certificate* to *Sowerby* and married, and had the Pauper IN *Sowerby*; where the Father died: Then the Wife and Son *removed* to *Halifax*. They afterwards brought *another* Certificate from *Halifax* to a *third* Place; and thence came back to *Halifax*: There the Mother died. The Son was afterwards *bound to a Maſter in Sowerby*, and ſerved him there; none of the Family having *otherwiſe* gained a Settlement in any other Place. The Juſtices held him ſettled at *Sowerby*; and the Order was confirmed at the Seſſions: But both Orders were QUASHED *here*.

The Anſwer to this Caſe is, That the Pauper there had *never been removed* back *by* ANY ORDER, from *Sowerby* to *Halifax*. Indeed it is poſſible that the Indenture of Apprenticeſhip in that Caſe, was † NOT STAMPT. But however, this Caſe is *no* Authority to the *preſent* Point; becauſe the Party was never removed back again, *by any* ORDER, from the Place to which he came by Certificate.

Therefore——

The ORDERS (both of two Juſtices and of Seſſions) *muſt be* QUASHED.

☞ [On the 3d of *February* 1765, JOHN EARDLEY WILMOT, Eſq, (the preſent Lord Chief Juſtice of the Court of *Common Pleas*) kiſſed Hands on being appointed a Judge of this Court of *Kings Bench*, in the Room of MR. JUSTICE WRIGHT, who had reſigned a Day or two before.]

* See this Caſe, *Poſt*. pa. 408. No. 130. together with the Reaſon ſtated in the *Note* ſubjoined thereto, (pa. 419, 11) why it is omitted in its proper Place in Point of Time.

† This was a ſagacious Conjecture, and a true one. The Indenture was *not* ſtampt: And the Orders were given up as unſupportable, *becauſe* the Indenture of Apprenticeſhip was not ſtampt, nor the Duty paid.

Rex

Rex *v.* Inhabitants of Yarmouth. No. 120.

Tuesday, 11th *Feb.* 1755.

An Indenture of Apprenticeship, *unstamped*, is *not* VOID, if the *Consideration Money* be only *Sixpence*. *Sayer's Rep.* 107. S. C.

TWO Justices made an Order for the Removal of *William Jackson*, *Martha* his Wife, and *Sarah*, *Susannah*, and *William* their Children, from *St. Margaret's* in *Norwich* to *Yarmouth*: And the Sessions, upon Appeal, confirmed that Order.

Case stated—The said *William Jackson* was *bound*, and duly *served* a seven Years *Apprenticeship* to *John Fisher*, *&c*, in *St. Julians* in *Norwich*: But the said Apprenticeship appearing, by the said Indenture, to be in Consideration of SIXPENCE and which *had been paid*, with the said Indenture, to the said *John Fisher* [the Master;] *for which* NO DUTY was proved to be paid, pursuant to the Statute in such Case made and provided; therefore the Sessions confirm the said Order of Removal.

On *Wednesday* 20th. *Nov.* last, a Motion was made by Mr. *Blencowe*, to quash these Orders: For that although no Duty was proved to be paid, and though the *Indenture* of *Apprenticeship* appeared NOT *to be stampt*; yet it was *not void* to all Intents and Purposes, *within* the Act of Parliament of 8 *Ann. c.* 9. *sect.* 32 & 39. The Consideration-Money being *so small as* SIXPENCE *only*. To prove this, he cited the Case of *Baxter* v. *Fairlam* *, *P.* 19 *G.* 2. *B. R.* where the same Point came in question upon a Demurrer: And it was unanimously resolved "that the Legislature did not intend that any "Duty should be paid for so *small* a Sum; there being *no Coin* in "*England* so small as to pay it, nor any *Stamp* for less than twenty "Shillings."

* 1 *Wils.* 120. Most expressly in Point.

RULE *to shew Cause.*

Mr. Serjeant *Prime*, who was to have shewn Cause against the Rule, said he was satisfied that the Case of *Baxter* v. *Fairlam*, was in Point against him: And therefore he did not think it right to give the Court any Trouble in it.

Whereupon, *per Cur.*

Vide ante, No. 69, 80.

RULE *made* ABSOLUTE.
Both Orders QUASHED.

REX

No. 121. Rex *v.* Inhabitants of Letchlade.

Wedneſday 12th *February* 1755.

The after-born Son of a *Certificate*-Man is incapable of gaining a Settlement by *hiring* and *Service* in the *certificated* Pariſh.

Sayer's Rep. 171. S. C.

TWO Juſtices made an Order for the Removal of *Robert Watkins*, *Mary* his Wife, and *Mary*, *William*, *Patience*, and *Ann*, their Children, from *Letchlade* in *Glouceſterſhire* to *Highworth* in *Wiltſhire*: And the Seſſions, upon Appeal, diſcharged that Order.

Caſe ſtated—The Pauper's Father and Mother (*William* and *Eleanor*) came by Certificate from *Highworth* to *Letchlade*, and lived there; and afterwards had the Pauper *born to them in Letchlade*, during their Reſidence there under the ſaid Certificate; who was HIRED AND SERVED FOR A YEAR at *Letchlade*; but *never rented* a Tenement of 10*l.* *per Annum*, *nor ſerved any public Office* in the ſaid Pariſh.

On *Wedneſday* 20th *Nov.* laſt, Mr. *Gould* and Mr. *Coxe* moved to quaſh this Order of Seſſions, and to confirm the ſaid Order of two Juſtices; upon the Authority of the Caſe between the Inhabitants of *Thornford* and *Sherborne*, *P.* 15 *G.* 2. *B. R.* * where a Son born after the Certificate was holden to be *within* the Certificate: Which Certificate was there holden virtually to *include* as well *after-born* Children, as Children born at or before the Time when it was given.

Therefore, they ſaid, the Juſtices at Seſſions were miſtaken, in Point of Law.

* *V. ante*, pa. 182. No. 65. See alſo *ante*, No. 88, 112. S. P.

RULE *to ſhew* CAUSE.

Upon ſhewing Cauſe, now,

THE COURT (Mr. Juſtice *Foſter* and Mr. Juſtice *Wilmot*) were clear to make the Rule abſolute.

ORDER *of* SESSIONS *quaſhed*:
ORIGINAL ORDER *affirmed*.

Eaſter Term 28 Geo. 2. 1755.

No Determination of this Kind.

2

Trinity

Trinity Term

28 Geo. 2. 1755.

Rex *v.* Inhabitants of High and Low Biſhopſide. No. 122.

Saturday 7th *June* 1755.

A Settlement may be gained, by ſerving an *Apprenticeſhip* to a *certificate* Man, in a *third* Pariſh.

Sayer's Rep. 231. S. C.

TWO Juſtices made an Order for the Removal of *John Thackrey*, *Margaret* his Wife, and *John* his Son (aged ten Weeks) from the Townſhip of *High and Low Biſhopſide* to *Dacre cum Buerley* (both in the Weſt Riding of *Yorkſhire*:) And the Seſſions, upon Appeal, diſcharged that Order.

Special Caſe—That *Jonathan Joy*, a Taylor, being an Inhabitant legally ſettled in *Menwith cum Darley*, went from thence, by a *Certificate*, to *Reade*, in the Townſhip of *High and Low Biſhopſide*; where he reſided for ſome Years. That afterwards, about 18 Years ago, he the ſaid *Jonathan Joy* PURCHASED *a Freehold Houſe*, for the Sum of 10*l.* in the Townſhip of *Dacre cum Buerley*: After which, he *left Biſhopſide*, and went to inhabit in *Dacre cum Buerley*; to which Place he CARRIED HIS SAID CERTIFICATE, *and delivered it to the proper Officer there*. That upon his going to *Dacre cum Buerley*, he inhabited, and ſtill doth INHABIT IN HIS SAID HOUSE *ſo purchaſed* by him, as aforeſaid: And in *February* 1744, *John Thackrey* the Pauper was bound to him as an APPRENTICE *by Indenture*, for the Term of ſeven Years. That the ſaid *Thackrey performed his Service under the ſaid Indenture* with his ſaid Maſter; who, all the Time, *inhabited* IN *his ſaid Houſe* in the ſaid Townſhip of *Dacre cum Buerley*. The Seſſions were of Opinion "that "the Pauper did NOT *obtain* a Settlement BY *ſuch his Apprentice-* "*ſhip* as aforeſaid in the ſaid Townſhip of *Dacre cum Buerley*:" And therefore they *diſcharge* the ſaid Order of Removal; and order the Churchwardens and Overſeers of the Poor of *High and Low Biſhopſide* to pay to the Churchwardens and Overſeers of the Poor of *Dacre cum Buerley*, 2*l.* 18*s.* 6*d.* for Damages ſuſtained in maintaining the Parties removed, pending the ſaid Order of Removal.

HIGH and LOW BISHOPSIDE *and* DACRE *cum* BUERLEY.

On *Saturday* 25th of laſt *January*, Mr. *Gould* moved to quaſh the Order of Seſſions, and affirm the original Order.

This Caſe depends on the Act of 8 & 9 *W.* 3. *c.* 30. and 12 *Ann. ſtat.* 1. *c.* 18. *ſect.* 2.

To ſhew "that a CERTIFICATE *affects only the* TWO *Pariſhes to* "and *from* which the Certificated-Perſon comes, and NOT *a* THIRD "Pariſh;" and conſequently "that the Apprentice DID *gain a Set-* "*tlement in Dacre cum Buerley* by his ſerving ſuch Apprenticeſhip "there, *although* his Maſter came by Certificate, from *Menwith* "*cum Darley to* BISHOPSIDE"—he cited the Caſes of *Rex* v. *Inhabitants of Petham* *; *M.* 14 *G.* 2. *B. R.* and *Rex* v. *Inhabitants of Silton* †, *H.* 21 *G.* 2. *B. R.*

* *V. ante*, pa. 154. No. 54. See alſo 2 Sir *J. S.* 1147.

† *V. ut ſupra*, pa. 269, No. 92. in Point.

RULE *to ſhew Cauſe.*

On *Wedneſday* laſt the 4th Inſtant, Mr. *Norton* ſhewed Cauſe againſt quaſhing the Order of Seſſions; and, conſequently endeavoured to ſhew the Pauper *John Thackrey's* Settlement *not* to be in *Dacre cum Buerley*.

He did not diſpute Mr. *Gould's* Caſes: But he ſaid they were not applicable to the preſent. He urged that under 8 & 9 *W.* 3. *c.* 30. a Pariſh may give a GENERAL *Certificate*, not addreſſed to any *particular* Pariſh: And in ſuch Caſe, every Pariſh to which ſuch a Pauper comes, will be bound to receive him.

This is like the Caſe of *St. Nicholas in Harwich* and *Woolverſtone* § 2 Sir *J. S.* 1163. The Certificate was holden to be GENERAL; and to bind the Pariſh who had acknowledged the Pauper. 2 *Salk.* 535. *Honiton* and *St. Mary Axe*: "A Certificate con- "cludes the Pariſh that gives it, as to all the World."

§ *V. ante*, p. 171. No. 62.

Mr. *Gould, contra*. The only Queſtion is "Whether the Maſter "is to be conſidered as reſiding in *Dacre cum Buerley* UNDER *the* "*Certificate*;" or, "Whether the Certificate was (if I may ſo ex- "preſs it) FUNCTUS OFFICIO, by it's being delivered to the Pariſh "of *Biſhopſide*; and was, AFTER *that*, no more than *Waſte-* "*Paper*."

He ſaid that Mr. *Norton's* Doctrine would eſtabliſh the Paupers to be *Vagrants* all over the Kingdom: And his Caſes prove no more than that the Pariſh who gave the Certificate are eſtopped from ſaying "that the Pauper does not belong to them;" and it was ſo determined in the Caſe of *Uttoxeter* and *Sudbury* ‖. But a Certificate does not preclude the Certificated-Perſon from gaining a Settlement

‖ *V. ante*, No. 119, pa. 373.

ment by any *proper Act*: He may do this, notwithſtanding the Certificate.

The Certificate is, in the preſent Caſe, *ſatisfied*, and is *no more in Force*. A Certificate ought to be *depoſited* with the *firſt* Pariſh to which the Pauper comes from the Pariſh who gives it.

HIGH and LOW BISHOPSIDE *and* DACRE *cum* BUERLEY.

CUR. ADVIS'.

Lord Chief Juſtice RYDER now delivered the Reſolution of the Court.

THIS Caſe depends upon a very general Queſtion; *viz*, "Whether an *Apprenticeſhip to a Certificate-Man*, in a THIRD Pariſh "to which the Maſter's Certificate was *not directed*, will gain a "Settlement to the Apprentice in ſuch *third* Pariſh."

Now the Apprentice certainly *did* gain a Settlement by being bound an Apprentice and inhabiting as ſuch, by the 3 & 4 *W. & M. c.* 11. *ſect.* 8; *unleſs* either the Act of 9 & 10 *W.* 3. *c.* 11. or that of 12 *Ann. ſtat.* 1. *c.* 18. prevents it.

But *neither* of theſe Acts extend to THIS *Caſe*: (which he ſhewed by reciting them.) See 9 & 10. *W.* 3. *c.* 11. and 12 *Ann. ſtat.* 1. *c.* 18. *ſect.* 2.

It is ſaid "that the Certificate binds the Pariſh giving it, "*againſt* ALL THE WORLD."

But by 8 & 9 *W.* 3. *c.* 30. *ſect.* 1. the Certificate is to bind the Pariſh giving it, "WHEN *and* NOT *before* the Perſon mentioned in "the Certificate ſhall happen to become chargeable to the Pariſh "TO *which ſuch Certificate was given*:" And then and not before, it ſhall be lawful for the Certificated-Perſon (if he has not otherwiſe acquired a legal Settlement there) to be removed back. But this Act of 8 & 9 *W.* 3. *c.* 30. does *not* give this Right of Removal to any THIRD *Pariſh*: It relates *only* to the Pariſh Townſhip or Place TO *which the Certificate was given*.

Therefore *no* THIRD Pariſh has a Right to claim that Benefit from the Proviſions of it, which was *only* intended to extend to THAT SINGLE Pariſh TO WHICH the Paupers came certificated, from that wherein they were ſettled.

But it is ſaid "that this Certificate was DELIVERED by *Joy*, "the Maſter, *to the Officers* of the Pariſh of *Dacre cum Buerley*, "*at the Time* when he *came to inhabit there*:" And it is expreſsly ſtated "that he carried it, and DELIVERED *it to the proper Officer there*."

HIGH and LOW BISHOPSIDE *and* DACRE *cum* BUERLEY.

But that was neither *neceſſary nor proper*: And indeed it *ought* to have been *left* with the Officers of the Pariſh of *Biſhopſide*. It is *not directed* to the Officers of *Dacre cum Buerley*; nor ſent to them by thoſe of *Menwith cum Darley*.

Beſides, the Man mentioned in the Certificate had a *Right* to come to the Pariſh of *Dacre cum Buerley*, WITHOUT *a Certificate*: For he had purchaſed a *Freehold Houſe there*; and he had a Right to come and *live in it*.

The Caſes cited by Mr. *Norton* are not applicable to the preſent Caſe.

As to that of St. *Nicholas* in *Harwich* and *Woolverſtone*, in the late Maſter of the Roll's Reports, 1163*—it was there aſſerted as a Fact and expreſsly owned and acknowledged in the Certificate "that the "Paupers *were Inhabitants* LEGALLY *ſettled at Woolverſtone*;" and the Pauper came with the Certificate *from Woolverſtone* TO *Harwich*. Whereas here, neither 9 & 10 *W.* 3. *c.* 11. nor 12 *Ann. ſtat.* 1. *c.* 18. affect the Caſe of the Settlement now in Queſtion; nor did the Maſter *come into the Pariſh of Dacre cum Buerley* UNDER the *Certificate*. And as to the DIRECTION of the Certificate —It is *not* directed *to* the Pariſh of *Dacre cum Buerley*: And Mr. *Norton's* Rule will *not hold* ſo *generally* as he has laid it down, "that "every Pariſh is bound to receive a Pauper who comes with a "Certificate which is NOT *directed* TO *them*."

* *V. ante*, No. 62, pa. 171.

As to the Caſe of *Rex* v. *Inhabitants of Petham*, 2 Sir *J. S.* 1147‖ —it is almoſt in Point to the preſent Caſe. And the Reaſon there given is "that the Act of 12 *Ann.* never intended to meddle with "the Caſe of a legal Pariſhioner's Apprentice." And it goes on "The true Conſtruction of the Statute is, that *in reſpect to the cer-* "*tificated Pariſh*, ſuch Binding and Inhabitation ſhall give no Set-"tlement: But *another* Pariſh is not within the Grievance." So that the Words of 12 *Ann.* are confined to that *ſingle* Pariſh *to which the Certificate is given*; and *do not extend* to any *third* Pariſh.

‖ See it *ante*, pa. 154. No. 54.

The Caſe of *Honiton* and *St. Mary Axe*, *Mich.* 9 *Ann.* in 2 *Salk.* 535. goes no further than that of *Harwich* does; *viz.* that "the "Certificate is an Acknowledgment owning the Pauper to be legally "ſettled in the Pariſh that gives it; and that the Pariſh certifying "is concluded againſt *all other* Pariſhes‡." So that it will receive

‡ See 2 *Salk.* 530. *Trin.* 2 *Ann. All Saints* and *St. Giles's* in *Northampton*—directly contrary to that Caſe of *Honiton* and *St. Mary Axe*; and agreeable to the preſent Determination.

the ſame Anſwer as has been given to that Caſe of *Harwich*. And the Act of 8 & 9 *W.* 3. *c.* 30. *ſect.* 1. very plainly ſhews, that ONLY *the* TWO Pariſhes are concerned; *viz.* thoſe *from* which and TO which the Certificate is given.

Hren and Low Bishopside *and* Dacre *cum* Buerley.

There was another Caſe between the Inhabitants of *Silton* and *Wincanton**, *H.* 21 *G.* 2. which is in Point to the preſent Caſe.

It is ſo *clear* upon the *Penning of the Acts of Parliament*, that we ſhould have had little Difficulty about it, though there had been *no* Caſes already determined: Much leſs Difficulty have we, upon the Penning of the Acts, *and the Caſes alſo*.

* *V. ante*, pa. 269, No. 92. *Rex* v. *Inhabitants of* Silton.

Our Opinion is, therefore, "that the Pariſh of *Dacre cum Buer-*"*ley* is the Pariſh wherein this *John Thackery* was *ſettled*, by his "Service THERE *under the Indenture of Apprenticeſhip*: And there-"fore that the Seſſions have done *wrong*, in quaſhing the original "Order made for the Removal of theſe Paupers from *Biſhopſide* to "*Dacre cum Buerley*." Conſequently the Order of Seſſions muſt be quaſhed.

Mr. *Juſtice* FOSTER repeated, that in this Caſe, the Maſter *did not* go into the Pariſh of *Dacre cum Buerley*, UNDER THE CERTIFICATE; but AS *the* OWNER OF A FREEHOLD there, which he had a *Right* to go and inhabit in.

Per Cur.—

Order of Seſſions QUASHED: *And The Original Order* CONFIRMED.

V. Poſt. No 125, *Rex* v. *Inhabitants of St. Peter's in Nottingham*; *and* No. 129, *Rex* v. *Inhabitants of Taunton St. Mary Magdalen*. See alſo *Poſt.* No. 170. *Rex.* v. *Inhabitants of Spotland, accord.*

No. 123.

Rex *v.* Inhabitants of Horſley.

Wedneſday 11 *June* 1755.

The Son of a *Certificate*-Man may gain a Settlement, by *Hiring* and *Service*, in a *third* Pariſh.

Sayer's Rep. 228. S. C.

AN Order of Seſſions confirmed an original Order made for removing *Abraham Cope*, *Jane* his Wife, and their five Children, from *Hollingeclough* in *Staffordſhire* to *Horſley* in *Derbyſhire*.

The only Queſtion was Whether the *Son* of a CERTIFICATE-*Perſon* born in the Pariſh to which his Parent came by Certificate could gain a Settlement *in a* THIRD *Pariſh* by a *Hiring and Service for a Year*.

THE

Horsley and Hollingeclough.

* *V.* (*ut supra*,) No. 92. pa. 269. See also *Post.* No. 136, 7. S. P.

THE COURT were clear that this gained a Settlement in the *third* Parish; and that the Case of *Silton* and *Wincanton* * was *in Point*, only with this (immaterial) Difference "that there the Son's "Settlement was gained by *Apprenticeship*, and here by a *Hiring* "*and Service*."

RULE MADE ABSOLUTE *for quashing both Orders*; viz. *the Original Order for removing* Abraham Cope, *his Wife and Children, from* Hollingeclough *to* Horsley; *and the Order of Sessions confirming it.*

Both Orders QUASHED.

Michaelmas Term 29 Geo. 2. 1755.

No Determination of this Kind.

Hilary Term

29 Geo. 2. 1756.

No. 124.

Wednesday 4th Feb. 1756.

A FREE GIFT to a *Feme Covert*, of a *Leasehold* Estate, under the Value of 30*l.* is not a *Purchase*, nor the *Husband* a *Purchaser*, within the 9 Geo. 1. c. 7. s. 5. *Sayer's Rep.* 268. S. C.

Rex *v.* Inhabitants of Marwood.

TWO Justices made an Order for the Removal of *Thomas Conibear* and *Mary* his Wife from *Kentisbury* to *Marwood* (both in *Devonshire*:) And the Sessions upon Appeal, confirmed that Order.

Special

MARWOOD and KENTISBURY.

Special Caſe——The Paupers (*Thomas Conibear* and *Mary* his Wife) in 1733, were removed by an Order of two Juſtices, from *Kentiſbury* to *Marwood*, as the Place of their *then* legal Settlement: Which Order was not appealed from. Some Years after, the ſaid Paupers returning into *Kentiſbury* without a Certificate, were committed for ſuch Offence to *Bridewell*. Some Time after, *Henry Slocombe*, Father of the ſaid *Mary*, being poſſeſſed of a *Cottage-Houſe, Garden and Plot of Ground* in *Kentiſbury* aforeſaid, for the Reſidue of a Term of ninety-nine Years then *determinable on the* DEATH *of one Joan Slocombe*, (the *Conſideration-Money* for the *Purchaſe* whereof, as appeared by the Counterpart of the Leaſe thereof granted in 1689, produced and read in Evidence, for ninety-nine Years determinable on three Lives, amounted but to *twenty* SHILLINGS,) by his Deed-Poll dated 25th *July* 1749, in *Conſideration of his natural Love and Affection to his ſaid Daughter Mary*, did *give and grant* the ſaid Premiſſes, (except the Standing of a Bed in one Room, and a Way to and from the ſame,) *to his ſaid Daughter* MARY, being then the Wife of the ſaid *Thomas Conibear*; to hold to the ſaid *Mary*, *for* HER LIFE; and afterwards, upon Truſt for her Daughter, DURING HIS INTEREST therein.

That thereupon, the ſaid Paupers returned again into the ſaid Pariſh of *Kentiſbury*; and *entered* thereon, and *lived in* ſuch Houſe; *and* POSSESSED *and* ENJOYED *the ſaid Eſtate*; and *paid the High Rent* (10*s.* a Year) *for* SEVERAL YEARS; UNTIL *the Leaſe* DETERMINED *by the* DEATH *of the ſaid Joan*: When they were AGAIN *removed*, by Virtue of ſuch *other* Order, to the ſaid Pariſh of *Marwood*; who have appealed therefrom. The Seſſions are of Opinion and do adjudge, "That the ſaid Paupers, BY *having ſuch* "*Houſe*, and *living therein*, and POSSESSING *and* ENJOYING *the* "*ſaid Eſtate*, *did* NOT *gain* any Settlement in *Kentiſbury* afore-"ſaid;" and do therefore ratify and confirm the ſaid Order.

On *Thurſday* 27th *Nov.* laſt, a Motion was made by Mr. *Cox* (of *Lincoln's Inn*) to quaſh theſe Orders. His Objection was—That the Juſtices have no Power to remove a Man *from his* OWN *Eſtate*: And if he REMAINS *forty Days upon his own*, he *gains a Settlement thereby*, and his *former* Settlement is at an *End*. 2 *Salk.* 524. *pl.* 2. between the Pariſhes of *Ryſlip* and *Harrow*—"Living in a Pariſh "where One has Land, gains a Settlement without Notice: For the "Act never meant to baniſh Men from the Enjoyment of their *own* "Lands."

RULE *to ſhew* CAUSE.

Mr.

MARWOOD and KENTISBURY.

Mr. *Gould* now ſhewed Cauſe. The Caſes that might be cited *againſt* him he ſaid were 2 *Salk.* 524. *pl.* 2. between the Pariſhes of *Ryſlip* and *Harrow*, *H.* 8 *W.* 3. *B. R.* "Living on a Man's own "Land gains a Settlement." 1 *Strange* 502. between the Pariſhes of *Cranley* and *St. Mary Guilford*, *H.* 8 *G.* 1. "A Leaſe at Will "gains a Settlement." 1 *Str.* 608. between the Pariſhes of *Aſh-brittle* and *Wiley*, *M.* 11 * *G.* 1. "Long Poſſeſſion, and a Deſcent "Caſt, gain a Settlement." 2 *Str.* 908. *Tr.* 7 & 8 *G.* 2. *Rex* v. *Inhabitants of Sundriſh*†, "A Man can not be removed from his "own, deviſed to him; though only a Term of 5 *s. per Ann.*" 1 *Str.* 97. between the Pariſhes of *Murſley* and *Grandborough* in *Bucks*, *Tr.* 4 *G.* 1. "A Man can not be removed from his *own*; "though only 1 *s.* a Year, and for a Term of Years, which came "to the Wife as Adminiſtratrix." 1 *Str.* 163. between the Pariſhes of *Burclear* and *Eaſt Woodhay*, *P.* 5 *G.* 1. "A Copyhold by De-"ſcent, of ever ſo ſmall Value, gains a Settlement, even to a Cer-"tificate-Man."

* *V. infra*— "*all* theſe Caſes, &c."

† *V. ante*, No. 4. pa. 7. S. C.

But *all* ‖ theſe Caſes, he ſaid, are *precedent* to the Statute of 9 *G.* 1. *c.* 7. and he did not controvert them. But *under* that Act the preſent Caſe *is reſtrained*; ſo that it ſhall not gain a Settlement: For it is expreſsly provided thereby "That where the *Purchaſe-*"*Money* is UNDER 30*l.* the Purchaſer ſhall *not* gain a Settlement "LONGER *than his Intereſt in the Eſtate* CONTINUES."

‖ *V. contra, ut ſupra*, *M.* 11 *G.* 1. They are *not all* ſo.

This Act is indeed *confined to* PURCHASES, and does not extend to eſtates by *Inheritance* or even by *Deviſe*.

But here was only a *Grant* merely VOLUNTARY, in Conſideration of natural *Love and Affection*, of a *Cottage*, whereof the ORIGINAL CONSIDERATION-*Money* was *only* TWENTY *Shillings*; and the Intereſt in it was only for *Years*, determinable on three Lives, and now actually determined. So that this Caſe is clearly *within* this Act of Parliament.

Mr. *Cox*, on the other Side obſerved, that Mr. *Gould* admits "That a Perſon can not be removed *from his* OWN;" and "that "this will be a Settlement in *Kentiſbury*, *if it be* NOT *a Caſe within* "9 *G.* 1. *c.* 7. *ſect.* 5."

Now this is *not* a PURCHASE within the *Meaning* of this Act. It was a FREE DONATION, without any *pecuniary* Conſideration at all. The Conſideration was *natural Love and Affection*; and the Gift was to the *Daughter*, not to her Huſband: So that the *Huſband* takes *Jure Uxoris*; and it *veſts in him* by ACT OF LAW, *not* by the *Deed*. Therefore the Huſband was and is *irremovable*.

He

He cited *Hob.* 203. *Swaine* v. *Holman & Ux.* and *Co. Litt.* 300. *a.* to prove, " that the Huſband comes in *by Act of Law.*"

In 3 *Peere Williams* 40. *Sir Jermin Davers et al.* v. *Sir Jermin Dewes et al'*, Lady *Dover* was holden not to take her diſtributory Share of the Leaſehold Eſtates by *Purchaſe*, under the Deviſe; but by *Operation of Law.* And it has been determined in *this* Court " that a Deviſe ſhall not be conſidered as a *Purchaſe*, within *this* " Act, notwithſtanding the Caſe of *Roper* and *Radcliff.*"

In 1 Sir *J. Str.* 97. *Murſley* and *Grandborough*—the Circumſtances are in Point to the preſent. It proves " that a Man may gain a " Settlement *in Right of a* TERM *which his* WIFE has;" (though the Caſe was in 4 *G.* 1. which was before the Statute:) And it was holden, " that a Perſon coming to an Eſtate by Inheritance, De- " viſe, or other ſuch *Act of Law*, was NOT to be conſidered *as* a " PURCHASER."

The ORIGINAL *Conſideration* being here ſtated to have been only 20 *s.* proves nothing of the *preſent* Value. For that was ſo long ago as in 1689; and the Value may be greatly altered *ſince:* It might have been a *Building*-Leaſe.

Mr. *Gould* replied that the Huſband's Aſſent to the Grant *makes* him a *Purchaſer.* There is no ſimilar Caſe ſubſequent to the Act of Parliament of 9 *G.* 1.

Lord Chief Juſtice RYDER ſaid he was extremely clear about this Matter.

The 9 *G.* 1. *c.* 7. was intended to prevent Pariſhes from being *fraudulently* incumbered, under *ſmall* FRAUDULENT Conveyances; and it only intended to exclude all *Purchaſes* of Cottages *under* the Value of 30 *l.* from giving a Settlement LONGER than the *Continuance of the Intereſt:* (For a Man ought not to be hindred from *living upon his own* and being irremovable from it, AS LONG as his *Property continues* and he *continues to reſide upon it.*

There have been three queſtions introduced upon this Act: One on the Meaning of the Word " PURCHASE;" the next, whether the HUSBAND in this Caſe, *be a Purchaſer*, whatever his *Wife* may be;) and thirdly, whether *this* CONSIDERATION be a Conſideration *under* 30 *l.* (ſuppoſing him to be a Purchaſer.)

Now firſt, this is NOT *a Purchaſe* within the *Meaning* of the Act: For the Word " *Purchaſe*" is *not here* to be taken in the *largeſt* Extent of it, but is *confined* to Caſes where a PECUNIARY CONSIDERATION *is* PAID.

MARWOOD and KENTISBURY

In the great Case of *Roper* v. *Radcliffe*, the Word "*Purchaser*" was taken according to the Meaning and Intention of the Act of 11 & 12 *W.* 3. *c.* 4. And in the Case of Lord *Derwentwater*, the Person was considered *not* as a Purchaser within the Meaning of that same Act.

But *here*, a Pauper's Wife has an Estate assigned over to her, out of Love and Affection, WITHOUT *any Money-Consideration*, by her *own Father*: Which cannot be *such* a *Purchase* as THIS Act intends.

† *Dougl.* 738.

A *Devise* is not within *this* Act †.

Indeed IF the Husband had PAID *a Consideration*, he WOULD *have been a Purchaser*, *though* the *Conveyance* had been made *to* his *Wife*.

In the Case of 3 *Peere Williams* 40. and other Cases, it has been determined "that a Wife Administratrix or Executrix shall not, if "she is a Papist, take *Terms* or *other* Interests in Lands, under the "Will; because a Papist is disabled by 11 & 12 *W.* 3. *c.* 4. from "*purchasing*; and taking under a Will is * purchasing."

* *V.* 3 *Peere Wms.* 46.

But in *the present* Case, the Husband is *not* to be considered *as* a Purchaser, but as being *out of* this Act of 9 *Geo.* 1. And therefore he *acquired* a Settlement in *Kentisbury*. Consequently, the Sessions have determined wrong.

THE THREE OTHER JUDGES concurred with the Chief Justice in Opinion "that this Act of 9 *G.* 1. does NOT *extend* to "*Devises*, or Gifts, or *other* Methods of Acquisition; but is *con-*"*fined* to the particular Case of PURCHASES *for* MONEY-*Conside-*"*rations under* 30 *l.*" For, on the contrary Construction, Mr. Justice *Wilmot* observed, *no* Devise or Gift or Marriage Settlement would gain a Settlement, *unless* a *pecuniary* Consideration was paid.

He said that *this* Act was plainly intended *only* against gaining Settlements by Purchases for small MONEY-*Considerations*: And the Word "*Purchaser*" is *not* to be taken in its *strict legal* Sense, but according to the *Intention* of the Legislature; which was regarded in the Case of *Roper* and *Radcliffe*, and ought to be so in *this* Case; though that Intention was *very different* in the two Cases; for the Act of Parliament *there* in Question intended the *general* Sense of the Word; *this* Act, the *confined* one.

Per Cur. unanimously—

Both Orders QUASHED.

Vide Post. No. 179.; *Rex* v. *Inhabitants of Ingleton*, *P.* 1766, 6 *G.* 3. and No. 182. *Rex* v. *Inhabitants of Ilmington*, *Tr.* 1766, 6 *G.* 3.

Easter

Easter Term

29 Geo. 2. 1756.

Rex *v.* Inhabitants of St. Peter's in Nottingham. No. 125.

Saturday 15th *May* 1756.

An *Apprentice*, bound to a *Certificate-man*, may gain a Settlement by *ſerving* him 40 Days, in a 3d Pariſh. *Sayer's Rep.* 287. S. C.

ON *Wedneſday* 4th *Feb.* laſt, Mr. *Norton* moved to quaſh an Order of two Juſtices and the Order of Seſſions confirming it for the Removal of *John Wright* and *Martha* his Wife, and *William*, *Thomas*, and *Sarah* their Children from *Wilford* in *Nottinghamſhire* to *St. Peter's* in *Nottingham*.

The ſpecial Caſe ſtated is, in ſhort, only this—*Breſton* Pariſh gave one *Trentham* a *Certificate* TO *St. Peter's*. The *Certificate-Man* took the Pauper *John Wright* to be his *Apprentice*; and the Pauper ſerved him ſome conſiderable Time in *St. Peter's*. Afterwards, *Trentham* the Maſter *removed* to ST. MARY'S; where the *Apprentice ſerved* him about a Year. The Seſſions were of Opinion "that the *Certificate* EXTENDED *to St. Mary's*, though *only* DIRECTED *to St. Peter's*.

Mr. *Norton* ſaid this Opinion of the Seſſions was directly contrary to what the Court determined in the Caſe of *Rex* v. *Inhabitants of* * *Biſhopſide*, *Tr.* 1755, 28 *G.* 2. *B. R. viz.* "that a Certificate ex-"tends to *no* other Pariſh, but that SINGLE *one to which* it is "given."

* *Ante* No. 122.

And the Apprentice gains his Settlement by the LAST *forty Days* Service; which was in ST. MARY'S, *to which* Pariſh the Maſter was NOT certificated.

RULE *to ſhew Cauſe*.

Mr. *Norton* now moved to make the Rule abſolute.

Mr. *Caldecott* and Mr. *Aſton*, *contra*, gave it up, as being exactly the ſame Point with the cited Caſe of *High and Low Biſhopſide* †.

† See alſo Poſt. No. 170. S. P.

Whereupon the Rule for quaſhing the Order was MADE ABSOLUTE.

BOTH ORDERS QUASHED.

No. 126. Rex *v.* Inhabitants of Kingſwood.

Monday 17th *May* 1756.

A *Certificate Perſon* cannot be removed, as *likely* to become chargeable, without being *actually ſo*. *Sayer's Rep.* 283. S. C.

ON *Tueſday* 10th *Feb.* laſt, Mr. *Goula* moved to quaſh an Order of two Juſtices and the Order of Seſſions confirming it, for the Removal of *Elizabeth Tanner* from *Wickwar* in *Glouceſterſhire* to *Kinſwood* in *Wiltſhire*.

The two Juſtices removed her by common Order penned in the ordinary Form, as being *likely* to become chargeable to *Wickwar*; taking *no Notice* of her being a *Certificate*-Perſon.

The Caſe ſtated was——That *Abraham Tanner*, Father of the Pauper *Elizabeth Tanner* was born and bred in *Kingſwood*; and went afterwards into *Wickwar*; where he lived till the Time of his Marriage with *Ann* his Wife. That upon or ſoon after the ſaid Intermarriage, and before the Birth of the Pauper *Elizabeth*, the Churchwardens and Overſeers of the Poor of the Pariſh of *Kingſwood* gave a CERTIFICATE to the Churchwardens and Overſeers of the Poor of *Wickwar*, thereby acknowledging the ſaid *Abraham Tanner* and his ſaid Wife to be Inhabitants legally ſettled in the ſaid Pariſh of *Kingſwood*. That the ſaid *Abraham Tanner* and his ſaid Wife lived in *Wickwar* under the ſaid Certificate from the Time of the giving thereof until the Time of the Death of the ſaid *Abraham Tanner*; and during that Time had Iſſue the Pauper and three other Daughters, all born in *Wickwar*, and who lived with their Father and Mother there, from the Time of their reſpective Births till the Time of the Death of the ſaid *Abraham*; and from that Time, with their ſaid Mother, in the ſame Pariſh, until the Time of the ſaid Pauper's Removal by the ſaid Order of the ſaid two Juſtices; and never gained any legal Settlement therein. That about nine Years ago, one of the ſaid Daughters, (not the Pauper) being taken ill of the Small-Pox, ſhe the ſaid *Ann* applied to one of the Churchwardens or Overſeers of the ſaid Pariſh of *Kingſwood* for Relief on that Account; who promiſed her ſhe ſhould have Relief: But that ſhe the ſaid *Ann* never ſaw or heard from him, from that Time till after her Family were recovered of that Diſtemper. That in a Day or two after ſuch the aforeſaid Application, the *Pauper alſo ſickened* of the Small-Pox, and was *thereupon*, as were alſo her ſaid Siſter who before had ſickened as aforeſaid, and two other Siſters, *removed to an Houſe which had been provided by the Officers of Wickwar for the Reception of Perſons Paupers of Wickwar* then and there ill of the Small-Pox; where

where they the ſaid Pauper and her ſaid Siſters had, and recovered of, the ſaid Diſtempers, and that, *during all that Time*, ALL NECESSARIES *were provided for the ſaid Pauper Elizabeth* and her ſaid Siſters, *by one Richard Mouſral* an *Inhabitant* (but *not an Officer*) of *Wickwar*, who provided likewiſe for the other Perſons Paupers of *Wickwar* then ſick of the Small-Pox in the ſame Houſe: And that the ſaid *Richard Mouſral* afterwards declared "He had been paid for "the ſaid Proviſion and maintaining of the ſaid *Elizabeth Tanner* "and her Siſters during ſuch their Illneſs;" but, *by whom*, did not ſay. That the ſaid *Ann Tanner*, during the Time of ſuch Illneſs rented a Houſe at *Wickwar* aforeſaid, where ſhe and her ſaid Daughter might have lived; but were removed to the Houſe aforeſaid, to prevent the Spreading of the ſaid Diſtemper. And that the ſaid *Elizabeth*, from and after the Time of her Recovery, ſupplied herſelf by her own Labour with Cloaths and Proviſions, but lived in the ſame Houſe with her ſaid Mother. And that the ſaid *Ann Tanner* or *Elizabeth* the Pauper, or any of the ſaid *Ann*'s Family, never received any *other* Relief either from the Officers or Inhabitants of *Wickwar*, at any *other Time* or in any *other Manner* than as aforeſaid, ſave *one Shilling* received by the ſaid *Ann* from the ſaid *Richard Mouſral*, about ten Days after her Family's Recovery of the ſaid Diſtemper as aforeſaid; ſhe being *then in great Want*: Which the ſaid *Richard Mouſral* alſo declared "he was repaid;" but did not ſay *by whom*.

So that, though the Order of Seſſions ſtates a ſpecial Caſe, whereby it appears that ſhe *was* a Certificated-Perſon, from *Kingſwood* to *Wickwar*; yet it did not (as Mr. *Gould* objected) ſufficiently ſtate an *actual Relief* received from *Wickwar*: It only ſtates "that a Perſon did expend Money for her Relief, and was repaid the "ſame; but does not ſay "*by whom*" the Money was repaid.

Mr. *Gould* moved to quaſh both theſe Orders.

1ſt Objection, It does not appear that the Perſon who expended Money for her Relief was a *Pariſh-Officer*, or was repaid BY *the Pariſh*. It might be a Repayment by ſome of *her own* Family: At leaſt, *non conſtat* that it was BY *the* PARISH. So that it does not any where appear that ſhe was ever *actually* chargeable.

2d Objection, The *firſt* Order *ſhould have ſtated* her to be a *Certificate-Perſon*: For the *Seſſions can not amend* an original Order in any Matter of *Subſtance*. *Tr.* 14 & 15 *G.* 2. *B. R.* between the Inhabitants of *Wilcot* and *Great Bedwin* in *Wilts*; reported in 2 Sir *J. S.* 1158 * And as the *Fact* appears to be "that ſhe *was* a Certifi-"cated-Perſon,"

* *V. ante*, pa. 163. No. 58.

KINGSWOOD and WICKWAR.

"cated-Perſon," the two Juſtices had *no Juriſdiction* to remove her *till* ſhe was become *actually* chargeable.

RULE *to ſhew Cauſe.*

Upon ſhewing Cauſe now, by Mr. *Caldecott*, it was anſwered to the ſecond Objection——That the Juſtices at Seſſions have *not conſidered* her *as* a Certificate-Perſon: For their Order does not *ſufficiently* ſtate her to be a Certificate-Perſon within the Act.

He endeavoured to ſhew this, from the Expreſſions they had uſed in their Order. And he cited

1 Sir *J. S.* 94. between *Horncaſtle* and *Boſton* Pariſhes; and 1 Sir *J. S.* 211. between *Radcliffe Culey* and *Exall* Pariſhes; to prove that the Court will not *intend* any Thing to deſtroy it.

The firſt Objection ſeemed to be given up: At leaſt the Court conſidered it as given up.

As to the ſecond——

THE COURT held, that it appeared upon the *whole* of the Orders *taken together* "That ſhe *was* a Certificate-Perſon; and yet "was removed *without* being (or at leaſt appearing to have been) "*actually* chargeable."

And they thought that her being a Certificate-Perſon was ſtated in ſuch a Manner, as that the Court *would* TAKE *it* to be a *ſufficient* and *regular* Certificate: And the rather, becauſe this was a Point *never controverted at the Seſſions*; but ſeems to have been *acquieſced in*, without Diſpute, before them.

Now Certificate-Perſons ought not to be removed *till* they become ACTUALLY *chargeable*: Which it *does not at all appear* that this Perſon ever was.

Wherefore *per Cur.* unanimouſly——

Both Orders QUASHED.

No. 127.

Rex *v.* Inhabitants of Bradenham.

Monday 31ſt *May* 1756.

ON *Saturday* 15th of laſt *November*, a Motion was made by Mr. *Caldecott*, to ſhew Cauſe why an original Order of two Juſtices made on 30th *December* 1754, for the Removal of *John Saunders* and *Sarah* his Wife, and *Mary*, *Samuel*, *Moſes*, and *Ann*, their

An Order of Seſſions, *diſcharging* a former Order of two Juſtices, is final, *only* as between the contending Pariſhes. *Sayer's Rep.* 285. S. C.

their Children, from *Thame* in *Oxfordſhire* to *Bradenham* in *Bucks*, ſhould not be quaſhed; and the Order of Seſſions made to diſcharge it, be affirmed. BRADEN-HAM *and* THAME.

He moved, at the ſame Time, to quaſh an original Order of two Juſtices made on 28th *March* 1755, for the Removal of *Sarah Saunders* the Wife of *John Saunders*, and *Mary*, *Samuel*, *Moſes*, and *Ann*, their Children, from *Thame* to *Bradenham*, and the Order of Seſſions confirming it.

He obtained a RULE *to ſhew* CAUSE, *in each.*

There had been *four* Orders made in this Caſe:

1ſt, An Order of two Juſtices to remove *John Saunders* and this *Sarah* his Wife, and the ſame four Children from *Thame* to *Bradenham*, made 30th *Dec.* 1754.

2d, An Order of Seſſions diſcharging it, (made at the next *Epiphany* Seſſions.)

3d, An Order of two Juſtices made 28th *March* following (1755) to remove *the* WIFE *and Children* from *Thame* to *Bradenham*.

4th, An Order of Seſſions, made at the next *Eaſter*-Seſſions, confirming it.

The Motion to quaſh the two laſt Orders was grounded upon this

Objection——"That the DISCHARGE by the Seſſions (upon Appeal) of a *former* Order made between the *ſame* Parties, is "CONCLUSIVE, as between the *ſame* two Pariſhes; though it leaves "the Matter at large, as to all *other* Places." 2 *Salk.* 492. between the Pariſhes of *Swanſcomb* and *Shenſfield*; *Carth.* 516 *. between *Bedingham* and *Kingſton-Bowzey* Pariſhes.

* Both theſe Caſes are in Point.

On *Tueſday* 3d *February* laſt, Mr. *Nares*, on Behalf of the Pariſh of *Thame*, moved that the Orders might *go* BACK *to the Seſſions*, in order for them to be at Liberty to amend the ſecond Order; by which, he ſaid, the firſt original Order of two Juſtices was *not*, in Fact, *diſcharged* upon the MERITS (which were never entered into;) but *quaſhed*, upon an apprehended *Miſtake in* FORM. And he produced an *Affidavit* of the Facts he aſſerted. Which induced the Court to give him a

RULE *to ſhew Cauſe* why the ſecond Order, *viz.* the Order of Seſſions made at the *Epiphany*-Seſſions, *diſcharging* the original Order of the two Juſtices ſhould not be rectified, and made agreeable to the Truth of the Caſe.

BRADENHAM *and* THAME.

On *Monday* laſt, the 24th Inſtant, Mr. *Caldecott* ſhewed Cauſe againſt this laſt Rule. He urged his Reaſons why the Minutes of the Seſſions ſhould not be rectified, and the ſecond Order, *viz.* the Order of Seſſions made at the *Epiphany*-Seſſions 1755, be altered agreeably to ſuch rectified Minutes, inſerting the Word "*quaſhed*," inſtead of "*diſcharged:*" And he produced an *Affidavit* which *denied* the Seſſions Order being quaſhed *for Want of Form.*

THE THREE JUDGES (the Chief Juſtice being abſent) held it *doubtful*, upon the *Affidavits*, "whether it was *diſcharged upon* "*the Merits*; or *quaſhed for Want of Form:*" And therefore clearly and unanimouſly held "that *this* Court can do nothing in it."

They conſequently *diſcharged* this Rule about rectifying the Order of Seſſions.

Mr. *Nares* now ſhewed Cauſe againſt quaſhing the two laſt Orders. He allowed the Principles laid down, namely, "that the "DISCHARGE of an Order of two Juſtices by the Seſſions, upon "Appeal, is *concluſive*, as between the SAME two Pariſhes;" becauſe the Pariſh who were appealed againſt, and whoſe Order was thereupon diſcharged, are *eſtopped* to ſay "that the Pauper's Settlement is NOT in *their* Pariſh:" But he endeavoured to diſtinguiſh *this* Caſe out of the general Rule.

For, though he admitted that JOHN *Saunders*, the *original* Pauper, falls within this Rule, yet the *Wife and Children*, he ſaid, do NOT. For they are ſent to *Bradenham*, as the Place of THEIR laſt legal Settlement: And the Court may very well *preſume* that it was THEIR Settlement; though it might not indeed be the Settlement of JOHN *Saunders*. As in the Caſe of *St. Michael's Bath* and *Nunny* in *Somerſetſhire*, 1 Sir *J. S.* 544 the Wife and Child of *B.* (who was living) were ſent to the Place of *Settlement of the* WIFE *and* CHILD: And yet the Order was confirmed.

N. B. Theſe two Seſſions-Orders were made at the very *next* Seſſions, one after the other; *viz.* the former, at the *Epiphany*-Seſſions; the latter, at the *Eaſter*-Seſſions, next following: And the Man himſelf, *John Saunders*, was (as Mr. *Caldecott* ſaid) run away in the *Interim.*

The Counſel on the other Side (Mr. *Norton* and Mr. *Caldecott*) obſerved, That here the Wife and Children were *ſpecifically* INCLUDED *in the firſt Order* of Seſſions, *as well as John Saunders* himſelf,

ſelf. Therefore they are *expreſsly* within the Rule in 1 Sir *J. S.* 567. between the Pariſhes of *Foſton* and *Carlton*—— " That after " an Order of Removal is quaſhed, the Pauper can not be removed " a ſecond Time from the ſame Place to the ſame Place, *without* " *ſhewing* a *new* Settlement;" and the Caſe between the Inhabitants of *Barrow* v. *Ingoldſby*, P. 11 *Ann.* there cited; (of which Mr. *Caldecott* ſaid he had ſeen a fuller MS. Report.) In that Caſe, he ſaid, there was no Appeal from the firſt Order; and the ſecond was at nine Months Diſtance: The Court would NOT *preſume* a *new* Settlement; and as none was ſtated, they quaſhed the ſecond Order.

BRADENHAM *and* THAME.

IF there had been in Fact a new Settlement gained, it ought to have been *ſtated* ſpecially.

But the 2d Order of Seſſions calls *Sarah Saunders* " the *Wife of* " *John Saunders*;" and the Children " *their* Children:" So that *his* Settlement muſt be *alſo their's*.

Lord Chief Juſtice RYDER was abſent; being ſlightly indiſpoſed only, as it was then thought *.

* But he died the next Day, 25th *May* 1756.

Mr. Juſtice DENISON was clear, that theſe Paupers were *within* this general Rule; and that, even *if* there *had* been *Time to gain* a *new* Settlement, yet the Court would not *intend or preſume* any Thing of that; but it muſt be ſpecially STATED. It was ſo determined in *M.* 4 *G.* 1. between *Alderton* and *Fellingtowe* Pariſhes †.

† I have a MS. Account of this Caſe: And it was ſo.

So alſo if it was *her* Settlement, though not her Huſband's; *that* alſo ought to be ſtated: It ſhall *not be preſumed*.

Therefore both Orders ought to be quaſhed.

Mr. Juſtice FOSTER——It is final upon the *ſame* Pariſh who obtained the firſt Removal, if quaſhed upon Appeal, *on the Merits*. For an Order *quaſhed upon the Merits* on Appeal, is concluſive between the *two* Pariſhes; If *confirmed on the Merits*, it is final and concluſive upon the appealing Pariſh, againſt *all the World*. To prove this, he cited the Caſe between the Inhabitants of *Honiton* and *St. Mary Axe* §, from a MS. of his own.

§ *V.* 2 *Salk.* 536. S. C. And ſee *ante* No. 6. 89. *Poſt.* No. 135. S. P.

Therefore this is concluſive, unleſs a new Settlement *appears* to have been gained.

So, if a new Cauſe of Removal is acquired, they may be removed again: But not otherwiſe.

Mr. Juſtice WILMOT alſo concurred in Opinion for the ſame Reaſons.

BRADENHAM and THAME.

Per Cur. unanimously—

The *first* ORIGINAL ORDER, made 30th *December* 1754, for the Removal of *John Saunders*, &c. from *Thame* to *Bradenham*, was QUASHED: And the ORDER of SESSIONS *discharging* it, was AFFIRMED.

The two latter Orders (*viz.* the ORIGINAL ORDER made for the Removal of the Wife and Children from *Thame* to *Bradenham*, and the ORDER of SESSIONS made in Confirmation of it) were both QUASHED.

☞ ON *Tuesday* the 25th of *March* 1756, about Five in the Afternoon, died the *Right Honourable* SIR DUDLEY RYDER, Lord Chief Justice of this Court, of a Fever, in the 65th Year of his age, after only four Days Illness. He was born on 4th *November* 1691. If he had lived, he would have been, within a very few Days, Baron of *Harrowby* in the County of *Lincoln*.

Trinity Term

29 & 30 Geo. 2. 1756.

No. 128.

Rex *v.* Inhabitants of Duns Tew.

Saturday 19th *June* 1756.

Being *Partner* in a Farm of the yearly *Value* of 52 *l.* will gain a Settlement. *Sayer's Rep.* 311. S. C.

TWO Justices made an Order for the Removal of *Richard Guffkyns* and *Mary* his Wife, and *Richard*, *John*, *Samuel*, *Henry*, *Thomas*, *William*, *James*, *Elizabeth*, and *Susannah*, their Children, from *Little Tew* to *Duns Tew*, (both in *Oxfordshire*:) And the Sessions, upon Appeal, confirmed that Order.

The ſpecial Caſe ſtated the particular Circumſtances of a JOINT *Hiring* of a Farm of Mr. *Keck's* in *Little Tew*, of 52 *l. per Annum*, by *Richard Guffkyns* and his Father-in-Law *Goodwin*. But a Queſtion was made by the Counſel on the Part of *Little Tew*, "Whether *Guffkyns* was Tenant of the Farm *at all*;" or "Whether it was not a Taking by *Goodwin only*:" In which latter Caſe, they inſiſted that *Guffkyns* could not have gained a Settlement in *Little Tew*, as *Joint*-Tenant of a Tenement of double the Value of 10 *l. per Annum*; (*which*, if ſufficiently ſtated, they agreed would have gained a Settlement.) They urged, that it was plain that the *Seſſions* did *not* conſider it to be a *Joint*-Taking by both, or indeed any Taking by the *Pauper* at all; becauſe they have *confirmed* the Order for removing him to DUNS *Tew*, where he was before ſettled.

So that this Caſe ſeemed at firſt Sight to be NO *Queſtion at* LAW; but a mere Diſpute about the Conſtruction of the Words which were uſed by the Seſſions in ſtating the *Fact* of the ſpecial Caſe; which Fact the Seſſions had not explicitly found; but only ſtated the Evidence produced before them, concerning it. However, the Court afterwards entered into the *Law* ariſing upon theſe Facts ſtated.

The caſe was thus ſtated——That *Richard Guffkyns*, the Pauper, was born in *Sandford*; and afterwards, *together with John Goodwin* his Father-in-Law, rented a Bargain at DUNS *Tew*, at 81 *l.* a Year, *as Partners*; and lived there twelve Years. That in 1747, they being about to leave *Duns Tew*, *John Goodwin* ALONE went to Mr. *Keck's* Agent at LITTLE *Tew*, and took a Farm of 52 *l.* a Year, for four Years. That after ſuch Taking, and before the Farm was entered upon, *Guffkyns* inquired of *Goodwin* "Whether he depended "upon HIS GOING *with him to Little Tew*:" To which *Goodwin* replied "that he *did*; for he could not go without him." That *Goodwin* and *Guffkyns* removed from *Duns Tew* to *Little Tew*, *with their whole* JOINT-*Stock*, to the Value of more than 100 *l.* and *managed* the Farm *together*, for ſeven Years; BOTH *of them reſiding* thereon. That Mr. *Keck* gave his *Receipts for Rent* to *Goodwin* ONLY: And once, when Mr. *Keck* was obliged to diſtrain, the Diſtreſs was made upon the Stock which Mr. *Keck ſuppoſed to be Goodwin's* only; and *Goodwin* ALONE *gave a Bill of Sale* of the Stock; and *Guffkyns* then *ſtood by, without interpoſing*. That at the Expiration of ſeven Years, juſt before the Order of Removal was made, *Guff-*

DUNS TEW and LITTLE TEW

kyns went off from the Farm; and *Goodwin* took the whole Stock, allowing *Guffkyns* 62 *l.* for his Moiety thereof. It is therefore ordered by the Court [of Seſſions] "that the Order of the two Ju-"ſtices be *confirmed*."

Lord Chief Juſtice RYDER choſe to take Time to conſider this Caſe; obſerving only, at preſent, that the Words of the Statute of 13 & 14 *C.* 2. *c.* 12. *ſect.* 1. are "coming to *ſettle* in any "Tenement under the yearly VALUE of ten Pounds."

Mr. Juſtice DENISON ſaid——It had been determined over and over, "That the REAL Value of the Tenement is the Point to "be conſidered; and not the MERE *Rent*, (which may be often "much leſs than the Value.)" And the Reaſon which has been always given for fixing this Value, is the Unlikelihood of a Man's becoming chargeable, who is of ſo much *Credit* as to *be truſted with* a Tenement of 10 *l.* a Year Value. However, he gave no Opinion; being alſo willing to conſider it.

Mr. Juſtice FOSTER ſaid he gave his Opinion at large upon the Caſe of a *Joint*-taking of * 14 *l. per Annum*; and he held that to gain *no* Settlement to *either*: But he ſaid he did not remember the Particulars; for, he took Notes of *other* People's Opinions, but *never took any Memorandums or Notes of his* OWN.

* *V. ante*, No. 111. pa. 311. See alſo *poſt*. No. 184. 235.

In the preſent Caſe, the Stock was *joint*, and there ſeems to be a *joint Occupation*: For *managing* jointly, with a Joint-Stock, *is* OCCUPYING *jointly*. And he ſaid, he did not take it to turn *only* upon the *Credit* given him by the *Landlord*; but upon the Credit given *by the Legiſlature* to a Man *able to* STOCK a Farm of ſuch a Value: For the Parliament did not conſider *ſuch* a Man as within the *Intention* † of the Act.

† *V. ante*, No. 13, pa. 46. *accord.*

The Confinement to the *actual taking a Leaſe*, is all by Statutes *ſubſequent* to this Act. However, he was content to conſider it.

Mr. Juſtice WILMOT thought that it appeared upon the whole ſtate of the Caſe, that the Agreement between the two Farmers was *to occupy* JOINTLY *with a* JOINT-*Stock*. And he did not think the Opinion of the *Landlord* to be eſſential to this Man's gaining a Settlement: For *a* TENANT may *let* the Whole, or *even ſubdivide* it out to Under-Tenants, who may thereby gain a Settlement, if the Tenement be above 10 *l.* a Year. And where is the Difference between the original Tenant's *letting* OUT *Part*, and his *taking* IN *a Partner*?

V. Poſt. No. 217. 248. *accord.*

We neither can preſume, nor have here any Reaſon to *preſume* Fraud or Colluſion. They went on beyond the four Years, even as far

as ſeven Years; before *Guſſkyns* went off from the Farm and parted Stocks. DUNS TEW *and* LITTLE TEW.

The *Value* of the Tenement is to be eſtimated according to the TRUE *and* REAL Value; *not* according to the mere *Rent*: For there may have been a Fine paid in Hand; or there may be other Agreements, reducing the annual Rent. However, he was content to conſider it.

CUR. ADVIS'.

Mr. *Moreton* now moved for the Opinion of the Court: Which *Mr. Juſtice* DENISON delivered (the Seat of the Chief Juſtice being vacant*:) And it was "That the Order of two Juſtices "and the Order of Seſſions confirming it, ought to be quaſhed." For, we are all of us of Opinion, (he ſaid) That *Guſſkyns gained a Settlement in* LITTLE *Tew*, upon the State of this Caſe: For we conſider him, (being taken in *Partner* by *Goodwin*,) as having an INTEREST in the Farm; *at leaſt*, as a Tenant *at Will* to *Goodwin*, of the Moiety of a Farm *worth* 52 *l. per Annum* for the *whole* of it, and conſequently *his Moiety* above 10 *l. per Annum*.

* *V. ante.* pa. 398.

A Tenancy *at* WILL is ſufficient to gain a Settlement. So it was determined in 1 Sir *J. S.* 502. between the Pariſhes of *Cranly* and *St. Mary's Guildford*, on 9 & 10 *W.* 3. *c.* 11. The Reaſon of that Caſe will govern this. For there a Certificate-man agreed with the *Leſſee* of a Mill. "That he ſhould occupy the Mill and pay 12 *l.* "*per Annum*:" And there was *no* Under-Leaſe or Aſſignment; but in Purſuance of that Agreement, the Certificate-Man occupied the Mill two Years together, and paid the Rent. And it was holden "That if this was not an abſolute Leaſe for a Year (as Mr. Juſtice "*Eyre* ſaid it was, the Rent being reſerved as the Rent for a Year;) "yet it was undoubtedly a Leaſe *at Will*; which is *ſufficient* to gain "a Settlement †."

V. Poſt. No. 151. 178. 185. *accord.*

Therefore we are of Opinion that *Guſſkyns* is within 13 & 14 *C.* 2. *c.* 12. and *gained* a Settlement at LITTLE *Tew*: And conſequently we think the Juſtices have miſtaken the Caſe; and therefore the

ORDER *of two Juſtices*, and alſo the ORDER *of Seſſions confirming it muſt be* QUASHED.

BOTH ORDERS QUASHED.

† I have a MS Note of this Caſe; And the whole Court appear thereby to have agreed "that as it was a Leaſe at Will, it gained a Settlement."

Rex

No. 129. Rex *v.* Inhabitants of Taunton St. Mary Magdalen.

Wednesday 7th July 1756.

A *Certificate* DESERTED by the *Grandfather*, will not prevent the *Grandson* from gaining a Settlement in the certificated Parish, by *Apprenticeship*. *Sayer's Rep.* 314. S. C.

N.B. This is the *last* of the Settlement Cases, in order of Time, reported by Mr. *Serjeant Sayer*.

TWO Justices made an Order for the Removal of *Robert Bagg* and *Anne* his Wife, and *Robert*, *Joseph* and *Hannah* their Children from *Taunton St. Mary Magdalen* to *Taunton St. James's* (both in *Somersetshire*:) And the Sessions, upon Appeal, quashed that Order.

Special Case stated——*Robert Bagg*, the Grandfather of the Pauper, came from *Taunton St. James's* to *Taunton St. Mary Magdalen's* with a *Certificate* duly executed and allowed, which Certificate is in the Words following——" The Parish of *Taunton St.* " *James's* in the County of *Somerset*—*ss.* To the Churchwardens " and other Overseers of the Poor of the Parish of *Taunton St. Mary* " *Magdalen*, and to every and either of them, These—Whereas *Ro-* " *bert Bagg* of our Parish of *Taunton Saint James* aforesaid, Serge- " weaver, *Grace* his Wife, *Charles*, *Mary*, and *Hannah* their Chil- " dren, and *Sarah Plaister* his Apprentice, are (for their better Ad- " vantage and Livelihood) desirous to be and reside within your Pa- " rish of *Taunton St. Mary Magdalen* aforesaid; and lest they should " be molested by you, have desired this our Certificate, pursuant to the " Act of Parliament in that Case made and provided; We therefore " the Churchwardens and other Overseers of the Poor of the said Pa- " rish of *Taunton St. James* aforesaid, whose Names are hereunto " subscribed and Seals affixed, do hereby certify unto you the said " Churchwardens and other Overseers of the Poor of the said Pa- " rish of *Taunton St. Mary Magdalen* aforesaid, that we own and " acknowledge that the said *Robert Bagg*, *Grace* his said Wife, " *Charles*, *Mary* and *Hannah* his said Children, and *Sarah Plaister*, " now are, and so shall be deemed reputed and taken, Inhabitants " legally settled in our Parish of *Taunton St. James* aforesaid: And " that we will, whensoever they or either of them shall become " chargeable, as such our Parishioners receive them into our said Pa- " rish of *Taunton St. James* aforesaid, TOGETHER *with* ALL SUCH " CHILD AND CHILDREN lawfully begotten, as he the said *Robert* " *Bagg* shall, at any Time hereafter, BEGET *on the Body* of the said " *Grace* his said Wife; and provide for them according to Law. In " Witness whereof we have hereunto set our Hands and Seals the " 19th Day of *May Anno Regni D'næ n'ræ* Annæ *Dei Gratia* An-

" gliæ

" gliæ Scotiæ Franciæ *et* Hiberniæ *Reginæ Fidei Defenſoris &c. pri-* " *mo, Annoque D'ni* 1702."

Taunton St. Mary Magdalen *and* Taunton St. James's.

The ſaid *Robert Bagg afterwards* WENT BACK into the Pariſh of *Taunton St. James*; and *there* had *Robert* his Son, the *Father of the preſent Pauper*. And afterwards *Robert* the *Pauper's Father* MARRIED in *Taunton St. James's*; and went and lived, with his Wife and Family, in a Houſe in the ſaid Pariſh of *Taunton St. James* APART *from his Father*; and had Iſſue *Robert* the *Pauper*, *born* in *Taunton St. James's*.

Robert the *Grandfather died in Taunton St.* JAMES's.

Then *Robert* the Father died: And *Robert* the *Pauper was bound out an Apprentice*, by the Pariſh of *Taunton St. James*, *into* the Pariſh of *Taunton St Mary Magdalen*; and THERE SERVED *his Apprenticeſhip*. And it is ſtated that neither *Robert* the Grandfather, *Robert* the Father, or *Robert* the Son (the preſent Pauper) ever gained any other Settlement than as aforeſaid.

And the Court [of Seſſions] on hearing of Counſel for each of the ſaid Pariſhes, and what was alledged in the Premiſſes, doth ſet aſide, vacate, and diſcharge the ſaid Order.

On the laſt Day of laſt Term, Mr. *Burland* moved to quaſh the Order of Seſſions, and to affirm the original Order.

RULE *to ſhew Cauſe.*

This Caſe was argued on *Thurſday* laſt (the 1ſt Inſtant) by Mr. *Norton* and Mr. *Gapper* for *St. James's* Pariſh; and by Mr. *Gould* and Mr. *Burland* for *St. Mary's*.

For *St. James's* Pariſh it was urged that the Grandchild could not poſſibly be ſettled there, *under* the Certificate given by them to his Grandfather; when not only the Grandfather had *returned* to *St. James's*, but his Son (the Pauper's Father) had *left* his Father's (*viz.* the certificated Grandfather's) Family *before the Birth* of the Pauper.

At common Law, every Perſon was ſettled where he inhabited: And all theſe Acts of Parliament relating to Settlements are Infringements of the *Common* Law.

This Queſtion ariſes on 8 & 9 *W.* 3. *c.* 30. (the Certificate-Act,) which uſes the Word " *Family* *" ("together with his or her *Fa-* " *mily.*")

* *V. ſect.* 1.

The preſent Certificate extends *only* to the *immediate* Children: And therefore the *preſent* Caſe is not within the Words of this Act, " his or her *Family*:" Neither is it within the *Intention* of it; for it

Taunton St. Mary Magdalen and Taunton St. James's.

it only ſays "that ſuch Perſon and his or her *Children* may be ſent "back, *&c.*"

Then 9 & 10 *W.* 3 *c.* 11. ſays that no Certificate-Perſon ſhall gain a Settlement in the Pariſh to which *&c*; UNLESS they ſhall *bonâ fide* take a *Tenement of* 10*l. per Annum* Value, or be legally placed in and execute ſome *annual Office* in the Pariſh to which they are certificated.

But yet it has been holden "that they may *alſo* gain a Settlement "there, by *other* Methods; as by purchaſing Land, coming to it "by Inheritance, Executorſhip *&c.*:" And in the Caſe between the Pariſhes of *Burcleer* and *Eaſt Woodhay*, 1 Sir *J. S.* 163. it was determined "that a Man can not be removed from his *own*." So that the Conſtruction of this Act has been agreeable to the natural unreſtrained Liberty that poor Perſons have to get their Livelihood wherever they can beſt do it.

Here, the Purpoſe of the Certificate was *wholly anſwered* to the Grandfather; and he had *returned* back to his own Pariſh.

* *V. ante*, pa. 381. No. 122.

And this is agreeable to the Caſe of *High and Low Biſhoppſide* *, *Trin.* 28 *G.* 2.

Beſides, here the old Man's Son was EMANCIPATED from his Father's (the Grandfather's) Family.

If it does not ſtop at *Children*, it may by the ſame Kind of Reaſoning be extended to the *lateſt Poſterity* of Certificate-Perſons; which would be extremely inconvenient †.

† *V. ante*, pa. 375.

Children unſettled, going along with the Father, AS *Part of his Family*, do gain a derivative Settlement: But *not* unleſs they go along with the Father, AS *Part* of his Family. 2 Sir *J. S.* 831. between the Pariſhes of *St. Michael's Coſlany* in *Norwich* and *St. Matthew's* in *Ipſwich*. So that the Court will take Notice *who are* the Family of a Pauper. And theſe are *his* CHILDREN *only*; NOT the Child of an *emancipated* Son.

So that this is reduced to the common Caſe of a poor Apprentice; who does gain a Settlement by ſuch Apprenticeſhip: And there remains nothing ſingular or particular in this Caſe to vary it from the general Rule.

They cited the Caſes of *Rex* v. *Inhabitants of Sowerby* §: And *Rex* v. *Inhabitants of Sudbury* ‖; and *Rex* v. *Inhabitants* of *Sherborne* ‡.

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§ *H.* 24 *G.* 2. *B. R. vide infra*, the Note at the Foot of this preſent Caſe.

‖ *V. ante*, No. 119, pa. 373. ‡ *V. ante*, No. 65, pa. 182.

The

TAUNTON ST. MARY MAGDALEN and TAUNTON ST. JAMES'S.

The Counſel on the other Side (for *St. Mary's* Pariſh) ſaid This Queſtion depended on the Certificate-Acts of the 8 & 9 and 9 & 10 *W.* 3: Which are beneficial Acts for the Good of Trade; and therefore the Court will *extend* them as far as they can, even to the *Grandchildren* of Certificate-Perſons: and the Certificate extends to the Wife and Family, after the Death of the Certificate-Man himſelf.

Every Thing relating to derivative Settlements is here out of the Caſe: For, this Matter ſtands juſt as it originally did in 1702, when the Certificate was given; and there is no Intervention of any *third* Pariſh, to diſcharge it. The preſent Pauper is the Son of a Son of the Certificate-Man himſelf; and did not GAIN any Settlement in any *third* Pariſh; but only *continued his original hereditary* Settlement in one of theſe *two* Pariſhes *originally* concerned in this Certificate. Therefore the Son of old *Robert Bagg* was *within* the Compaſs of the Certificate; and might *under it*, have gone to *St. Mary's*. Conſequently, ſo was the Grandſon alſo. And *if St. Mary's* was *obliged to receive* them, *under the Certificate*, the Pariſh of *St. Mary* ought alſo to be *protected* by the Certificate.

It is objected, "that ONLY *the* IMMEDIATE *Children* of the Cer-"tificate-Perſon are included in the Certificate given to their Pa-"rent."

But the Word "FAMILY" includes *all the Deſcendants*, from Generation to Generation. *Wild's* Caſe, 6 *Rep.* 16. *b.*

Grandfathers are obliged to provide for their Grandchildren: And Grandchildren ought therefore, reciprocally, to relieve their Grandfathers.

The Acts of Parliament on this Subject greatly vary in their Expreſſions. The 3 *G.* 2. *c.* 29. *ſect. ult.* recites this 1ſt Clauſe of 8 & 9 *W.* 3. *c.* 30. and uſes the Word "*Family*," as ſynonymous with the Word "*Children*," even in the recited Act: And "*Chil-*"*dren*" includes *Grand*children.

So that this Certificate remains ſtill in Force; and the Pauper's Settlement is in *St. James's*.

Mr. Juſtice DENISON thought it a Caſe of Conſequence, and a new Point: And therefore, he ſaid, he ſhould conſider of it.

There are two Points—1ſt. How far the *Certificate-Act* ſhall *extend*; *i. e.* how far the Word "FAMILY" ſhall extend. I believe this has never been determined.

There are indeed in 8 & 9 *W.* 3. *c.* 30. *ſect.* 1. the Words "*though born in that Pariſh:*" Which, it is urged, ſhall extend

TAUNTON ST. MARY MAGDALEN *and* TAUNTON ST. JAMES'S.

no further than to *immediate* Children afterwards born there. But I doubt whether that was intended for more than a *major Cautela*: I ſhould, at preſent, imagine that *Deſcendants are* included, *as well as* IMMEDIATE *Children*.

The 2d Point is how far the Son was EMANCIPATED from his Father's Family, by his own *leaving* it, and *marrying*, in the Pariſh which gave the Certificate, and to which his Father returned.

If theſe Perſons had been all *born in St. Mary's*, they certainly could *not* have gained a Settlement there, by an Apprenticeſhip. But as they were NOT *born there*, the Queſtion is, "Whether they "could claim the *Benefit* of the Certificate." And I would be glad to know *when* the Certificate determined, if it is determined.

However, he choſe to conſider of it.

Mr. Juſtice FOSTER gave no Opinion. But he obſerved, that the *Son* of old *Robert Bagg* was *not* in *St. Mary's* at all: And the Grandſon *never* was there *under the Certificate*, but only under the *Appenticeſhip*.

The Queſtion then is "Whether this Certificate was not *waved*:" And if ſo, then "Whether the Son, who did NOT *claim under it*, "can be ſaid to be ſettled in the Pariſh that gave it; AFTER *it* "*had been long deſerted*."

As to the Time *when* it *ended*——I ſhould think it ended, *when* the Perſon who went to *St. Mary's* with it, *left St. Mary's*, and *came back with his Family* to *St. James's*, and *never made any further Uſe of it*.

Mr. Juſtice WILMOT gave no Opinion: But thought the Word "*Family*" took in *all* Deſcendants whatſoever.

A *Deviſe* to "*Children*" takes in *Grand*children. So it has often been determined in another Court; particularly, in 2 *Vernon*, 108.

But the other Point is conſiderable; *viz.* "Whether, when a "Man has gone to a Pariſh with a Certificate, and *afterwards* DE-"SERTS *this Certificate*, and *returns*, with his Family, to his pro-"per Pariſh, who gave it, and *never* makes *any further Uſe of it*, "it ſhall yet be conſidered as in Force."

In the Caſe of *Sudbury* *, the Certificate was *functus Officio*: And my Doubt is, whether the Circumſtances of this Caſe are not *tantamount* to that Caſe. *Here*, it is manifeſt that the Certificate was *deſerted*: And it was given *fifty-four Years ago*; and *no Uſe at all made of it* for a *great* Number of Years; but the Man *came back*, and reſided, to his Life's End, in his own original Pariſh. Therefore my Doubt, I ſay is, Whether this Certificate is not to-

* *V. ante*, No. 119. pa. 373. a ſolemn Reſolution.

tally *at an End*; although the Grandchildren ſhould be admitted to be included in it, in Caſe it were ſtill in Force: For I am not ſatisfied that it ſhall have this *Extenſion* to all Deſcendants, AFTER ſuch a *Deſertion*. TAUNTON ST. MARY MAGDALEN *and* TAUNTON ST. JAMES's.

Mr. Juſtice FOSTER—In the *Civil* Law, "*Liberi*" extends to *Grand*children.

Mr. Juſtice DENISON—We will conſider of this Caſe; and endeavour to give our Opinion upon it within the Term.

CUR. ADVIS'.

And now, on Mr. *Gould's* Motion—

Mr. Juſtice DENISON delivered the Reſolution of the Court.

We are inclined to think (*without* giving any Opinion upon the *other* two Points, where there is no Neceſſity for it,) That the Rule which was prayed for quaſhing this Seſſions-Order ought to be diſcharged, upon the particular Circumſtances of this Caſe; and the Seſſions-Order confirmed.

Two Matters of Conſequence have been diſputed.

ONE Queſtion was "Whether the Act of Parliament of 8 & "9 *W.* 3. *c.* 30. *extends* to the GRAND*children* of a Certificate-"Perſon; or is *confined* to *immediate* Children."

ANOTHER Queſtion was, "Whether the Son of this Certificate-"Man was EMANCIPATED from his Father's Family, or not."

We are unwilling to give our Opinion on *either* of *theſe* Points; it not being at all neceſſary to do ſo; as we hold "that the CERTI-"FICATE *itſelf* was of *no Force*, at the Time of the Grandſon's "being put Apprentice in *Taunton St. Mary's*; but was then totally "*at an End*." For in ſo long a Courſe of Time as this is, and after ſuch a Deſertion, we will conclude "that there *was an End* of "it: And it ought to have been * *given up* to the Pariſh of *St. James*. It was, at *that Time* when the Order in Queſtion was made, and under the Circumſtances of this Caſe, of *no more Effect than if it had* NEVER *been given*. It was abſolutely waved and deſerted: And the Father and Grandfather of this Pauper could *not* have gone to *St. Mary's again*, without a *new* Certificate; the *old* one being totally at an End.

* *V. ante*, pa. 384.

It is a good deal like the Caſe of *Uttoxeter* †, where the Certificate was conſidered as *functus Officio*, and *as if it had never at all exiſted*; being, in that Caſe, *totally at an End*, as being ſatisfied, and having had it's full and whole Effect, by the *Removal* of the

† *V. ante*, No. 119. pa. 373. *Rex* v. *Inhabitants of Sudbury*.

TAUNTON ST. MARY MAGDALEN *and* TAUNTON ST. JAMES'S.

Paupers (under an Order of Juſtices indeed) *to the Pariſh who had given* that Certificate.

Therefore, without entering into a Diſcuſſion of the EXTENT of the Certificate; or how many Deſcents the Word "*Family*" ſhall include; or drawing the Line minutely and exactly, what *ſhall*, or *ſhall not* be *eſteemed an* EMANCIPATION of a Son from his Father's Family; it ſuffices here, that we go upon the *particular Circumſtances* of this Caſe, that *after ſo great a Length of Time*, and *ſuch a Deſertion* of it, THIS *Certificate* ſhall be looked upon to be *at an End*, and *as if it had never been given*.

And if ſo, *then* the *Apprenticeſhip* of *Robert Bagg*, the Pauper removed by the preſent Order, will have juſt the *ſame Effect*, as if *no* ſuch Certificate had ever been given at all, or were any Ingredient at all in the Caſe; that is to ſay, that the Apprentice is ſettled in *St. Mary's*.

Conſequently, the *two Juſtices* were *miſtaken*, in ſending this Man and his Family to *St. James's*; and the *Seſſions* did *right*, in diſcharging the Order of the two Juſtices.

Therefore let the

ORDER *of* SESSIONS (*which diſcharges the Order of the two Juſtices*) *be* AFFIRMED.

ORDER *of* SESSIONS AFFIRMED.

See the Caſe of *the King* againſt *the Inhabitants of Frampton on Severn*, *Dougl.* 402, wherein the Principle of Deſertion, eſtabliſhed in this Caſe, is recognized by the Court.

☞ NOTE——

The following Caſe (of REX v. *Inhabitants of* SOWERBY) does *not* come here in its *proper Place* in Point of *Time* * : But as it was cited in the laſt-reported Caſe, I have now tranſcribed it from the Orders upon the File, and added it to the reſt, in order to ſupply the former Omiſſion.

* See the Reaſon of this in the Note which concludes it.

No. 130. *Monday* 4th *Feb.* 1750. Orders quaſhed, in a Caſe *ſimilar* to the preceding one, upon an Objection to

Rex *v.* Inhabitants of Sowerby.

TWO Juſtices removed *George Riſhworth*, *Alice* his Wife, and *Sarah*, *John*, *Mary*, and *Elizabeth* their Children, from *Halifax* to *Sowerby*: Upon an Appeal a Caſe is ſpecially ſtated; *viz.*

the Validity of an *unſtamped* Indenture of Apprenticeſhip. *Sayer's Rep.* 201. S. C. *cited.*

SOWERBY and HALIFAX.

Jonathan Riſhworth, the Father of *George Riſhworth* the Party removed, being legally ſettled in *Halifax*, came to *Sowerby* with a legal CERTIFICATE *acknowledging him to be ſettled at* HALIFAX; and continued under the ſaid Certificate at *Sowerby* till his Death, which happened in 1721: And during his Reſidence in *Sowerby*, he married, and had Iſſue (by his Wife) the ſaid *George Riſhworth* the Party removed; who was *born to him in Sowerby*, ſometime in the Year 1719. Soon after the Death of the ſaid *Jonathan Riſhworth*, *Sarah* his *Widow* and the ſaid *George* the *Son* quitted their Habitation at and *left Sowerby*; and *removed into Norland*; where they reſided a ſhort Time, and then went and reſided ſome Time in *Halifax*, being the Place of their legal Settlement: And afterwards, in 1723, they removed to *Warley*; to which Place they brought ANOTHER *Certificate from Halifax*, owning them to be there ſettled. From thence they removed *back again in* 1724, into *Halifax*; where they inhabited till the Time of her [the Mother's] Death; and then the ſaid *George Riſhworth* the Son was taken into and maintained in the *Bluecoat Hoſpital* at *Halifax*, till *November* 1732, (being four Years:) About which Time, the Truſtees of a certain public Charity in *Halifax* aforeſaid, given for the Purpoſe of binding poor Children Apprentices, having agreed to the Binding of the ſaid *George Riſhworth* an Apprentice, the ſaid *George*, in Purſuance of ſuch Agreement, bound himſelf Apprentice *by Indenture* bearing Date 7th *Nov.* 1732, to *Abraham Hanſon of Sowerby* aforeſaid, to ſerve until he ſhould attain the Age of twenty-one Years. And thereupon the ſaid Truſtees paid to the ſaid *Abraham Hanſon* the Sum of 2 *l.* 5 *s.* out of the ſaid Charity-Monies. *George Riſhworth* duly ſerved the whole Term of his Apprenticeſhip, in *Sowerby* aforeſaid, (being the Place in which he was born, under the firſt-mentioned Certificate.) But the INDENTURE *of Apprenticeſhip was* NOT *ſtamped*; nor was the ſaid Sum of 2 *l.* 5 *s.* paid by the ſaid Truſtees to the ſaid *Abraham Hanſon* the Maſter, *inſerted in the Body* of the ſaid Indenture; nor was *any Duty paid*, in Reſpect thereof: But there was an Indorſement on *the Back* of the ſaid Indenture, bearing even Date therewith, and ſubſcribed by the ſaid Maſter, whereby the ſaid Maſter doth *acknowledge* the Receipt of the ſame Sum of 2 *l.* 5 *s.* paid as aforeſaid.

That neither the ſaid *Jonathan Riſhworth* in his Life-time, nor his ſaid Widow after his Deceaſe, nor the ſaid *George Riſhworth* the Party removed, had at any Time ſubſequent to the granting the firſt-mentioned

Sowerby and Halifax.

mentioned Certificate and previous to ſuch his the ſaid *George's* Binding and Inhabitation as aforeſaid in *Sowerby* aforeſaid, done any Act to gain a Settlement. The Seſſions being of Opinion "that "the ſaid *George Riſhworth*, at the Time of his being bound Apprentice as aforeſaid, was *not*, nor ought to be conſidered as a "Perſon who *came into* the ſaid Townſhip of *Sowerby* BY *a Certificate*, he *not having* lived or reſided within the ſaid Townſhip "during the Space of NINE *Years and upwards* next before the "Time of his being bound Apprentice as aforeſaid; and that "THEREFORE he *obtained* a Settlement by his being *bound by* INDENTURE *and ſerving as an Apprentice in Sowerby aforeſaid*;" do therefore *confirm* the ſaid Order of Removal.

On *Monday* next after the *Octave* of the *Purification*, in *Hilary* Term *Anno* 24 *G.* 2. (being the 4th of *February* 1750,)

By this Court (*of* King's Bench),

Both theſe ORDERS *were* QUASHED *for the Inſufficiency thereof.*

NOTE—

I happened to be, upon this *ſingle* Day, confined at Home by a Touch of the Gout. But I was very well informed "that nothing occurred in Court on that Day, worth re-"marking." So that this Caſe, I was pretty ſure, could not have been much litigated or diſcuſſed.

However, upon Mr. *Gould's* citing it, in *Hilary* Term 28 *G.* 2. (in the *Sudbury* Caſe, *ante*, pa. 375, 376.) as an *Authority*, I ſearched the Files, and found it; and alſo ſearched for and found the Rule for quaſhing the Orders.

But I *then ſuſpected* "that they were quaſhed upon an "Objection to the *Validity of the Indenture of Apprentice-"ſhip*:" Which, upon the State of the Caſe appears to be *abſolutely void* to *all* Intents and Purpoſes *whatſoever*. (See *Rex* v. *Inhabitants of Leland*, and *Rex* v. *Inhabitants of Holbech*, *ante*, pa. 198 to 200. and *Rex* v. *Inhabitants of Llanvair Dyffryn Clwyd*, *ante*, pa. 236 to 238.) And I find, upon further Examination into it, "that my Con-"jecture was right:" For Mr. *Hume Campbell* (who was to have ſupported the Orders) ſaid "He had looked in-"to the Caſe, and found the Objection to the Indenture "of

" of Apprenticeſhip ſo ſtrong," (*viz.* as being VOID for *Want of being duly ſtampt* and for that *no Duty was paid*,) " that he would not pretend to ſay any Thing in Sup-" port of them."

And upon *this Foot*, the Court quaſhed the two Orders.

So that the Caſe is no Authority to the *Point* for which it was *cited*, either in the laſt-mentioned Caſe of *Taunton St. Mary Magdalen*, or in the former Caſe of *Sudbury* (No. 119.)

MEMORANDUM.

THE *vacant* Seat of the CHIEF JUSTICE was filled up, in the firſt Week of *Michaelmas* Term 1756. The *Honourable* WILLIAM MURRAY, his Majeſty's Attorney General, was called to the Degree of *Serjeant at Law*, on *Monday* the 8th of *November*; was ſworn into the Office of Chief Juſtice, in the Evening of the ſame Day; and was immediately created BARON *of* MANSFIELD; and on *Thurſday* the 11th took his Place upon the Bench as Lord Chief Juſtice.

And on *Friday* the 19th of this ſame *November* 1756, the Earl of *Hardwicke*, Lord High Chancellor, reſigned the Seals: Which were the ſame Day, delivered by his Majeſty in Council to the Lord Chief Juſtice *Willes*; Sir *Sidney Stafford Smyth*, ſecond Baron of the *Exchequer*; and Sir *John Eardly Wilmot*, puiſné Judge of the Court of *King's Bench*.

Michaelmas Term

30 Geo. 2. 1756.

Rex *v.* Inhabitants of Aythrop Rooding.

No. 131. *Monday* 29th *Nov.* 1756.

A married Woman cannot be removed from the ESTATE of her *Husband*, as being *likely* to become chargeable.

TWO Justices removed *Susannah Gates*, the Wife of *William Gates*, and *Robert*, *William*, *Edward*, and *Susannah*, her four Children (one of them nine Years of Age, and the other three under seven,) from *Aythrop Rooding* to *White Rooding*: Which Order was quashed by the Sessions, upon an Appeal.

The Substance of the Case was, that *William Gates*, this Woman's Husband, having been legally settled at *White Rooding*, went away and left his Wife and Children. Whereupon, she and her Children went and lived for the Space of forty Days, WITHOUT *her Husband*, in a Copyhold Tenement of her *Husband's* OWN, at *Aythrop Rooding*. But legal Notice "to depart" was given to her, within the forty Days, by *Aythrop Rooding*: Which she not doing, two Justices made this Order for removing her, AS *being* LIKELY to become chargeable, from *Aythrop Rooding* to *White Rooding*; which they adjudged to be the last legal Settlement of her Husband. But the Sessions, conceiving that the Wife, *though* WITHOUT her Husband, *could not* be removed from her Husband's OWN Estate, quashed the Order.

On *Saturday* the 22d of this *November* 1756, Sir *Richard Lloyd* moved to quash this Order of Sessions, and to affirm the original Order.

RULE *to shew Cause.*

Mr. *Gould* and Mr. *Norton* now shewed Cause.

Sir *Richard Lloyd*, who was for quashing the Order of Sessions, argued, That tho' the Husband had it in *his Power* indeed to have gained himself a Settlement at *Aythrop Rooding*, by going and *residing there forty Days* upon his *own* Estate; yet it could never be his last legal Settlement, UNLESS he himself *had actually resided there for forty Days:*

Days: Becauſe if it ſhould be otherwiſe, a Man who had Property in various Pariſhes, might be laſt legally ſettled in ALL *of them* at the SAME Time. AYTHROP ROODING *and* WHITE ROODING.

Mr. *Gould* and Mr. *Norton* admitted, that neither the Wife and Children nor even the Huſband himſelf could have been removed TO this Place where the Huſband had never reſided. But they inſiſted that they were irremovable FROM it, as they were inhabiting upon their *own* Eſtate: For they did not come to inhabit there as *Intruders* or Vagrants, but to reſide upon their *own*; and no one can be removed from their *own*, be the Value ever ſo ſmall, or let them come by it in any Manner. But theſe Perſons are removed as Intruders, and as only *likely* to become chargeable.

Sir *Richard Lloyd* replied, That ſhe came to *Aythrop Rooding without* her Huſband's Conſent. He alledged that "being irremovable for forty Days," and "gaining a Settlement," are *convertible Terms*; and that every Perſon likely to become chargeable to a Pariſh, is removable from it; and that this Woman, with her Children, certainly *rambled* from her Huſband's *laſt* legal Settlement; and went to the other Place *without* his Conſent; which ſhe had no Right to do. The Settlement of the Children muſt follow that of the Father.

THE COURT, *viz.* Lord *Manſfield*, Mr. Juſtice *Deniſon*, and Mr. Juſtice *Foſter*, (Lord Commiſſioner *Wilmot* being engaged in the Court of *Chancery*,) were unanimous and clear, That the two Juſtices had *no Power* to remove her from her *Huſband's* OWN *Property*, upon her being *only* LIKELY to become chargeable to the Pariſh where it lay.

LORD MANSFIELD ſaid, that as no Authority was produced on either Side, the Court muſt determine this Caſe upon the Reaſon of the Thing and the Laws relating to the Poor.

This is the Huſband's *own* Eſtate: And *he himſelf* certainly might have gone and gained a Settlement there, by reſiding forty Days. It is ſtated, *generally*, "to be his own:" It does not appear to have been a Purchaſe within 9 *G.* 1. *c.* 7: nor does it at all appear *how* he came by it. Neither does it appear that the Wife went to reſide upon it, *againſt* the Huſband's Conſent. The old Settlement remains as it was: She is only *irremovable* from the Property of her Huſband. And ſo it is, in the Caſe of Soldiers in the King's Service. She can't be removed from her Huſband's Property, upon being *only* LIKELY to become chargeable.

AYTHROP ROODING and WHITE ROODING.

This is agreeable to the Intent of the Statutes, and to the Reaſon of the Thing.

Mr. Juſtice DENISON——"Gaining a Settlement," and "being irremovable from a Place for forty Days," are *not* convertible Terms. The Huſband's Settlement remains as it was: But, nevertheleſs, the Wife is *not removable from his Eſtate*: For ſhe is *not within* the Intent and Meaning of the 13 & 14 *C.* 2. *c.* 12. nor is it agreeable to the Liberty of Mankind, that a Perſon ſhould be removed from their *own* Eſtate.

This Woman's going thither does not appear to be *againſt* the Conſent of her Huſband: It is rather to be preſumed that ſhe went *with* his Conſent. Nor is *Aythrop Rooding* obliged to maintain her: And conſequently they are not hurt by her being there. If ſhe will ſtay there, and can't maintain herſelf, ſhe muſt look to *that*. The two Juſtices have therefore done wrong in removing her as being only *likely* to become chargeable to *Aythrop Rooding*.

The *Majus* and *Minus* of the Eſtate is out of the Queſtion: It makes no Difference in the *preſent* Caſe, be it *greater* or be it *leſs* in Value.

Mr. Juſtice FOSTER held that this Woman had a *natural* Right, or at leaſt a *matrimonial* Right to go to her Huſband's Eſtate: And as there does not appear to be any *Diſſent* of her Huſband, it ſhould rather be preſumed that he *conſented*.

The *Huſband himſelf* would not have been removable from his *own*, if he had gone thither. His Right is under *Magna Charta*: "None ſhall be diſſeiſed of his Freehold."

This Woman was *not become chargeable* to *Aythrop Rooding*. *If* ſhe had become *actually* chargeable to that Pariſh, I think that by Common Law they muſt have maintained her. This is the Common Law, ſo far back as from the Time of the Mirror.

As to the *Children*——The eldeſt is but nine Years old, and is Part of the Woman's Family: And ſhe is Head of the Family, in the Abſence of her Huſband. And we can't preſume a Child of only nine Years of Age to have gained a Settlement for itſelf. The reſt of the Children are *under* ſeven: They muſt therefore remain with their Mother for Nurture.

PerCur.——

Order of Seſſions AFFIRMED: And
The Order of two Juſtices QUASHED.*

* *Vide Poſt.* No. 169. S. P.

Hilary

Hilary Term

30 Geo. 2. 1757.

Rex *v.* Inhabitants of Chidingfold. No. 132.

Thurſday 10th *Feb.* 1757.

Paying the LAND-TAX will gain a Settlement, although the *Tenant* be allowed it again by his *Landlord*.

MR. *Aſton* had moved, on *Saturday* 29th *January* laſt, to quaſh an original Order of two Juſtices made for the Removal of *Richard Graſſum*, *Ann* his Wife and their three Children (*George Ann* and *Richard*) from *Bramſhot* in *Hants* to *Chidingfold* in *Surrey*, and alſo the Order of Seſſions confirming it.

He did not ſtate the Caſe particularly; but merely the Queſtion, "Whether the Tenant's *paying* the LAND-*Tax* (which was allowed "him again by his Landlord,) amounts to ſuch a *Notice*, as ſhall "gain the Tenant a Settlement." The Seſſions were of Opinion "that it did *not*."

Mr. *Aſton* inſiſted "that it *did*;" and cited *Paſch.* 7 *G.* 2. *B. R. Rex* v. *Inhabitants of Oakhampton* *, where a Tidewaiter's being *taxed* to the Land-Tax, for his Salary, was holden to be Notice within 3 & 4 *W. & M. c.* 11. *ſect.* 6. and that he thereby gained a Settlement; even though it was *paid* by the Collector.

* *V. ante*, No. 3. pa. 5.

Hil. 9 *G.* 2. *B. R. Rex* v. *Inhabitants of Bramley* †: Where the being aſſeſſed AND *paying two Quarters* ONLY to the Land-Tax, was holden to gain a Settlement. [See Dr. *Burn's Juſtice of Peace and Pariſh Officer*, pa. 532. 533. S. C.]

† *Vide ante*, No. 22. pa. 75.

And now, Mr. *Gould* (who was to have ſhewn Cauſe againſt the Rule for quaſhing theſe Orders) very candidly acknowledged that he could not ſupport them; the Point being already *fully ſettled*, by former Determinations,

Whereupon, *The Rule for quaſhing them was* MADE ABSOLUTE.

Both Orders QUASHED.

V. ante, pa. 6. and the Caſes there referred to.

Eaſter Term

30 Geo. 2. 1757.

No. 133.

Rex *v.* Inhabitants of Fremington.

Friday 13th *May* 1757.

TWO Juſtices removed *Mary Bevens* from *Fremington* to *Sherwell* in *Devonſhire*: And the Seſſions, upon Appeal from this Order, diſcharged it.

An *Apprentice* may gain a Settlement, by ſerving 40 Days in a *different* Pariſh, with the CONSENT of the *original Maſter*.

The Caſe ſtated was this——*Mary Bevens*, the Pauper, was bound an Apprentice, by a Pariſh-Indenture, to *John Richards* of *Fremington*, to ſerve him till her Age of twenty-one Years or Day of her Marriage, (which ſhould firſt happen.) She came of Age on 23d *November* 1753: When her Apprenticeſhip expired. She ſerved her Maſter, in *Fremington* aforeſaid, till about the 1ſt of *June* 1753: And ſome Time before the ſaid 1ſt of *June*, *Richards* told the Pauper "he had no Buſineſs for her; and *ſhe ſhould go* WHERE "SHE WOULD." And ſhe went to get a Place; but could get none, and returned to her Maſter. Afterwards, *Richards* meeting with a Relation of his, one *Nott*, of the ſaid Pariſh of *Sherwell*, who complained of wanting a Maid-Servant, *Richards* anſwered "*He* was *overſtocked with Maids*, and had an Apprentice-Maid "(meaning the Pauper,) which he would SPARE *to Nott, if Nott* "*and ſhe could agree* as to Time and Terms:" But made no Agreement with *Nott*; nor was the Pauper preſent. Afterwards, *Richards* told the Pauper "that *ſhe* MIGHT *go to Mr. Nott, and* LIVE WITH "HIM, *if they could agree.*" And the Pauper went to *Nott*, on the ſaid 1ſt of *June*, and made an Agreement with him "*to ſerve* "*him* till *Lady-day* following, for the Wages of thirty-two Shil-"lings:" And *ſhe lived* with him *in Sherwell* aforeſaid, *from the ſaid* 1ſt Day of *June* TILL *the 15th Day of* NOVEMBER 1753, and *received Wages* for that Time; and then went *back to her Indenture-Maſter (Richards)* in *Fremington* aforeſaid, with whom ſhe ſtayed *eight Days*; and then her Apprenticeſhip *expired*, by her coming

to

to twenty-one. And it was ſtated "that ſhe had gained no Set-"lement ſince."

FREMINGTON and SHERWELL.

The Seſſions declared themſelves to be of Opinion "That the "Pauper's Settlement was in *Fremington:*" And they *therefore* vacated the Order of the two Juſtices, (which had removed her from *Fremington* to *Sherwell.*)

On the laſt Day of *Hilary* Term laſt, this Court was moved, by Mr. *Norton*, for a Rule to ſhew Cauſe why the Order of Seſſions ſhould not be quaſhed, and the original Order affirmed: For that the Settlement of the Apprentice was in the Pariſh where ſhe had *ſerved the* LAST *forty Days*, namely in *Sherwell:* And it was a Service UNDER *the Indenture*, being with the *Conſent* of the Maſter, and the Indenture of Apprenticeſhip having *never been diſcharged.* 1 *Strange* 10, and 554, and 582, *Rex* v. *Inhabitants of Buckington*; and 2 Lord *Raymond* 1352, S. C. and 2 *Strange* 1001, *Rex* v. *Inhabitants of St. George Hanover Square* *.

* *V. Ante*, No. 5. p. 12.

The Counſel who were to ſhew Cauſe, in Support of the Order of Seſſions, acknowledged the general Poſition "that the Settle-"ment of an Apprentice is in the Pariſh where the laſt forty Days "Service was performed:" But without pretending to controvert this Principle, they raiſed a Doubt "Whether this *was* the preſent "Caſe upon the Facts ſtated." For here the *Maſter* could *receive no Advantage* from this Service of the Apprentice; but ſeems to have given her free Leave to make *her own* Advantage of it, in the beſt Manner ſhe could: And therefore ſhe may be conſidered, as being, by his Permiſſion, SUI *Juris.*

It was replied that the Indenture was *never diſcharged:* So far from it, that ſhe returned to her Maſter, and *ſerved out* her Apprenticeſhip. And the intermediate Service, (by his Permiſſion) was *under* it.

Lord MANSFIELD ſaid that, as the general Principle was admitted, the Caſe was reduced to a very ſhort Queſtion. It was very plain, he ſaid, that the Pauper was NOT *diſcharged from her Apprenticeſhip:* Her Maſter only gave her Permiſſion to go elſewhere and ſerve another Perſon, for her own Benefit. She did ſo: And afterwards, ſhe *came back again to her Maſter*, and was *received by him*, and ſtayed with him eight Days, which was *to the End* of her Term of Apprenticeſhip. So that it was no more than a generous Intention of her Maſter, to give her this Permiſſion to ſerve the other Perſon for her own Benefit: But the Apprenticeſhip neither was, nor was intended to be diſcharged. Conſequently, the Service

FREMINGTON *and* SHERWELL.

vice with Mr. *Nott* in *Sherwell* was a Continuation of the Apprenticeship, and performed *under* it.

Mr. Juſtice DENISON and *Mr. Juſtice* FOSTER expreſſed themſelves to the like Effect: And the latter mentioned the Caſe of a Servant who was * permitted by his Maſter to go away three Weeks before the End of his Year, in order to take the Benefit of the Herring-Fiſhing Seaſon; and was, notwithſtanding his having done ſo, adjudged to have gained a Settlement.

* *V. ante*, pa. 251, No. 85. *Rex* v. *Inhabitants of Goodneſtone.*

Per Cur. unanimouſly——

Order of Seſſions QUASHED:
Order of two Juſtices AFFIRMED.

V. poſt. pa. 441, No. 142, *Rex* v. *Inhabitants of Auſtrey, Hil.* 31 *G.* 2. See alſo the ſeveral Caſes referred to at the Bottom of *pa.* 16. and *particularly* No. 91. 174. 186. 250.

No. 134. Rex *v.* Inhabitants of Alton.

Saturday 14th *May* 1757.

A Certificate cannot be avoided, and Settlement gained, by *Hiring* and *Service*, in a *third* Pariſh, where the Maſter reſides, *not* as an INHABITANT, but as a mere *caſual* SOJOURNER.

See the Opinion of *Lord Manſfield*, in this Caſe, more fully and accurately ſtated in 3 *Burn*, Ed. 1785. p. 443.

TWO Juſtices removed *Anne Crockford*, the WIFE of *Richard Crockford* junior, and her four Children by him, *viz. John* (aged eleven Years,) *Richard* (aged ſix Years,) *William* (aged four Years,) and *Jude* (aged eighteen Months,) from *Elvetham* to *Alton*, (both in *Hampſhire:*) Which Order was confirmed by the Seſſions.

The ſpecial Caſe ſtated by the Seſſions was this——The Pariſh of *Alton*, in 1722, gave a *Certificate* with *Richard Crockford* the Father of *Richard Crockford* junior, and *Elizabeth* the Wife of the ſaid *Richard Crockford* ſenior, to the Pariſh of *Elvetham*, acknowledging them to be legally ſettled in the ſaid Pariſh of *Alton:* UNDER *which Certificate*, the ſaid *Richard Crockford* the Father and *Elizabeth* his Wife went into the Pariſh of *Elvetham*, and have dwelt there ever ſince. That the ſaid *Richard Crockford* junior was *born* at the Pariſh of *Elvetham*, AFTER *the Certificate* granted as aforeſaid; and *neither* the ſaid *R. C.* the Father, *nor R. C. junior did any Act whereby to gain a Settlement in* the ſaid Pariſh of *Elvetham.* That the ſaid *Richard Crockford* junior, on 29th of *Auguſt* 1734, was HIRED FOR A YEAR, as a Covenant-Servant, by Sir *Henry Calthorpe* Knight of the *Bath*, IN *the ſaid Pariſh of* ELVETHAM, and ſerved that Year out, in the Pariſh of *Elvetham.* That the ſaid *Richard Crockford* junior was, at the Expiration of the ſaid YEAR, HIRED

ED AGAIN as a Covenant-Servant, by the ſaid Sir *Henry Calthorpe*, at *Elvetham* aforeſaid, *for* ANOTHER *Year*; and ſerved the ſecond Year out: But the LAST FORTY DAYS *Service* of the SECOND Year, which the ſaid *R. C.* junior lived with the ſaid Sir *Henry*, was in the Pariſh of SCARBOROUGH in the County of *York*. That the ſaid *R. C.* junior did NOT, at the End of the ſaid ſecond Year, *quit* the Service of the ſaid Sir *H. C:* But *at the Expiration of the ſaid ſecond* Year, *viz.* on 29th *Auguſt* 1736, the ſaid *R. C. junior applied to the ſaid Sir Henry to make a* NEW *Agreement for* ANOTHER *Year*; when the ſaid Sir *Henry* ſaid, "IT WOULD BE TIME "ENOUGH, WHEN THEY RETURNED HOME TO ELVETHAM:" Whereupon the ſaid *R. C.* junior CONTINUED *on for* ABOUT SIX WEEKS, until the ſaid Sir *Henry*, returned back from the ſaid Pariſh of *Scarborough* unto the ſaid Pariſh of *Elvetham: When* the ſaid *R. C.* junior was AGAIN HIRED, by the ſaid Sir *Henry*, *for a* THIRD *Year, at advanced Wages*, and *ſerved the ſaid third Year out*, in the ſaid Pariſh of *Elvetham*; and *continued* in the Service of the ſaid Sir *Henry* for *ſeven Years more*, in the ſaid Pariſh of *Elvetham*; and his Wages were advanced every Year, by Agreement between the ſaid *Richard Crockford* junior and the ſaid Sir *Henry Calthorpe*. That the ſaid *R. C.* junior, after the quitting the Service of the ſaid Sir *Henry*, married *Anne*, named in the Order; by whom ſhe has the four Children alſo named in the ſaid Order, and now living.

The Seſſions confirmed the original Order; for that the Pariſh of *Alton* gave the *Certificate*, UNDER *which*, the ſaid *R. C.* junior was born; and neither his Father nor himſelf did any Act, whereby to gain a Settlement in *Elvetham*.

Upon a Motion made by Mr. *Gould*, on *Tueſday* 25th of *January* 1757, to quaſh theſe two Orders, two Objections were made to them; *viz.*

1ſt Objection——That the WIFE *and* CHILDREN, ONLY, are removed; without any Notice at all being taken of the *Huſband:* So that this Removal is, or at leaſt (for aught that appears to the contrary) may be, a *Divorce* of the Woman from her Huſband.

2d Objection——That though *Richard Crockford* junior, the Huſband, could not indeed *originally* gain a Settlement at *Elvetham*, by his Service there, *ſo long as he remained Part of his Father's Family*, (as his Father came thither by Certificate,) yet he might, and actually did regularly gain a Settlement for himſelf at *Scarborough* * (which was a *third* Pariſh,) BY *his ſerving* THERE *above forty Days:* And then, *after* that Time, and *after* having once gained a Settlement

* *V.* 1 *Strange* 524. *Rex.* v. *Inhab. Sancti Petri, Oxon.*

ALTON and ELVETHAM.

ment of his own, he conſequently muſt gain a *ſubſequent Settlement at Elvetham*, under his *new* Hiring and Service with Sir *H. C.* for the THIRD Year; having been, *before* ſuch Hiring and Service, already EMANCIPATED *from his Father's Family*, BY *having* already gained a Settlement *for himſelf*, at *Scarborough*.

RULE *to ſhew Cauſe.*

Upon ſhewing Cauſe (on *Thurſday* 10th *February* 1757,) it was anſwered by Mr. *Nares* and Mr. *Norton*, of Counſel for the Pariſh of *Elvetham*,

1ſt, That as the Huſband's Place of Settlement appears, upon the Order, there can be no Doubt but that the *Wife and Children* may be ſent to *it*.

2dly, That the general Poſition upon which this ſecond Objection is founded, is contrary to the Intent and Meaning of the Certificate-Act, and would defeat it's End.

Beſides, here was a *Continuation* of the firſt original Contract: Which *went on*, notwithſtanding this *caſual* Reſidence at *Scarborough*, and was *never diſſolved, or even interrupted*.

And the COURT determined accordingly, upon both Objections; after having taken Time to conſider of the Caſe, with regard to the 2d Objection.

Lord MANSFIELD delivered the Opinion of the Court.

1ſt Objection. 1ſt, *Alton* appears to Us, (for the Reaſons I ſhall give in Anſwer to the 2d Objection) to be the Huſband's Settlement. He was at *Elvetham*, only under a Certificate from *Alton*; and he is expreſsly ſaid to have gained no Settlement in *Elvetham*, by any *other* Act than what is particularly ſtated; And we *can't intend* that he did. Therefore his Wife and Children were * *properly ſent thither*: He *himſelf* could not be removed *from Elvetham*, if he was not *at Elvetham*: And if he ſhould be found there *in future*, he may be removed by another Order.

* *V.* 1 *Strange* 544.

2d Objection. 2dly, The original Service at *Elvetham* (to which Pariſh this Man was certificated from *Alton*) *continued* and went on, during the whole Time; *notwithſtanding* the *caſual* intermediate Reſidence at *Scarborough*.

Undoubtedly, a Servant *may* gain a Settlement, by ſerving forty Days, in a Place where the *Maſter* himſelf has *none*.

And it *may* ſo happen, that a Servant may gain a Settlement in a Place where the *Maſter* NEVER *comes*: For the Service may be

performed, in a Place from which the Maſter in his own Perſon, is locally abſent; or if the Servant has his Maſter's Leave to be abſent at any Place, for his Health, yet his Service continues.

But in the preſent Caſe, the Servant gained no Settlement at *Scarborough*; either upon the general Grounds of theſe Determinations; or upon the particular Circumſtances of the Caſe itſelf; or upon the Authority of thoſe Caſes that have been imagined to be ſimilar to it.

This Perſon was a Certificate-Man, hired by Sir *H. C.* (a Gentleman of Faſhion,) in a Pariſh where Sir *Harry* lives and reſides. Sir *Harry* goes to *Scarborough*, (a Place of public Reſort,) for his Health or Amuſement; and not as an Inhabitant, but *only as a Sojourner*. Whilſt they were there, the ſecond Year of his Service ended. This was mentioned by the Servant to his Maſter: And on the Servant's propoſing a new Agreement, for another Year, the Maſter ſaid "It *would be Time enough* when they returned Home." When he came home, he hired the Servant for another Year: And the Servant continues to live with him ſeven Years.

Now if this Service for forty Days at *Scarborough* were to acquire a Settlement there, it would be a very *great Hardſhip*, both upon the Pariſh of *Scarborough*, the *Place of public Reſort*; and alſo upon the Pariſh of *Elvetham*, who *depended upon the Certificate* given them by the Pariſh of *Alton*.

Suppoſe, a Servant was to break his Leg, and be left by his Maſter upon the Road; or ſhould be waiting at a Sea-port Town, for a Paſſage above forty Days; the Service, in both theſe Caſes, *continues*: And yet, *would it be reaſonable* that this ſhould gain a *Settlement* in ſuch Pariſh? This could never be the Intent of the Law-Makers.

The Maſter's Place of *Abode*, his *Domicil*, can never be ſuppoſed to be at *Scarborough*: And if his *caſual ſojourning* there were to obtain a Settlement there for his Servant, attended with the Conſequences drawn from it, this would be a *Fraud* upon the Pariſh to which the *Certificate* is given, and where the Servant was hired *upon the Faith* of ſuch Certificate.

Indeed, the Caſe of the King againſt the Inhabitants of St. *Peter's* in *Oxford*, reported in 1 *Strange* 524, has been ſtrongly urged, to prove that the Servant ſhall, in the preſent Caſe, gain a Settlement in *Scarborough*; ſince the Maid, in that Caſe, was adjudged to have gained one in *Fawly*, *only* by ſerving her Miſtreſs there *during a Viſit*.

ALTON *and* ELVETHAM.

But—[Here, his Lordſhip entered into a very full Diſcuſſion of this Caſe, and expatiated very largely upon it. In doing which, he obſerved that the Report of this Caſe, as it appears in 1 *Strange* 524, is very inſufficient and incorrect, in Point of Fact; and that the Reaſon there given, is as incorrect as the Fact: And added that he had looked to ſee how this Caſe was ſtated by Mr. *Burn*, and by Mr. *Foley*; (for it is mentioned in Mr. *Burn's* Book, Title *Poor*, Fo. 526, in the Folio Edition, and in *Foley's* Caſes on the Laws relating to the Poor, Fo. 215,) and found that none of them ſtate it truly. However, out of them all, he ſaid, one might diſcover it: And accordingly he ſtated what he collected, from all theſe Accounts, compared together, to have been * *probably* the true State of the Caſe; which he took to be this——Mrs. *Cooke* was Mother in Law to Dr. *Clavering*, and alſo to Mr. *Freeman*; and lived, (as a Lodger, or Viſitor, or Friend,) *ſometimes* with Dr. *Clavering* in *Chriſtchurch*, and *ſometimes* with Mr. *Freeman* at *Fawly-Court*: So that ſhe had really NO *Place of Abode*; and was *as much at Home*, with Mr. *Freeman*, as with Dr. *Clavering*. Therefore ſhe could not be conſidered upon the Foot of a Perſon who had a *ſettled Dwelling at Chriſtchurch*, and only went on a mere Viſit to *Fawly-Court*. Upon the whole, he concluded that this Caſe did not at all ſtand in the Way of the Court's determining, in the preſent Caſe, that *R. C.* junior, the Servant of Sir *H. C.* did *not* gain a Settlement at *Scarborough*.

* *V. infra*, the *true* State of it, taken from the Record.

☞ NOTE—Since there has been ſo much Doubt and Miſapprehenſion concerning the Caſe here cited, I have had the Curioſity to tranſcribe it from the original Record: And the *true* Caſe is as follows——

"*Rex* v. *Inhabitantes Sancti Petri in Oriente in Civit'. Oxon*".

Two Juſtices removed *Mary Norris* from the Pariſh of St. *Peter* in the *Eaſt* in the ſaid City, to the Pariſh of *Faaly* in the ſaid County of *Oxford*: Which Order was diſcharged by the Seſſions, upon Appeal; it appearing (as it is ſtated in the Order of Seſſions) That the ſaid *Mary Norris* was *hired at Chriſtchurch* in *Oxon*, an EXTRAPAROCHIAL Place, on the 16th of *May* 1717, for one Year, to Mrs. *Cooke*, who *then lived, and ever ſince hath lived* with her Son in Law Dr. *Clavering*, Canon

ALTON. and ELVETHAM

Canon of *Chriſtchurch*-College aforeſaid, AS *a Sojourner or Boarder*; and continued in her Service *there*, till the Month of ——— in the ſame Year; when, Mrs. *Cooke* went *upon a* VISIT, to her Son Mr. *Freeman's*, in the Pariſh of *Faaly* aforeſaid, where ſhe *continued three Months* UPON *the ſaid Viſit*; and her ſaid Servant *Mary Norris* was *with her* at the ſaid Mr. *Freeman's* and *continued* THERE *in her Service all the three* Months: At the End of which, the *Miſtreſs returned again to Chriſtchurch* aforeſaid; and *there* the Year's *Service expired*, ſhe having ſerved her Miſtreſs the whole Year, *in Purſuance* of the *firſt Hiring*.

Die Martis prox' poſt quinden'
Scæ' Trin' Anno 8vo. Georgij Regis.

The Rule (which I took from the Rule-Book) is Ordinatum eſt qd' *Ordo* SESSIONIS in hac Cauſa facta, de et concernen' Amotion' cujuſdam Mariæ Norris à paroch' Sci' Petri Orien' infra Civit' Oxon' ad paroch' de Faaly in Com' prædict', CASSETUR; et qd' *Ordo* ORIGINALIS AFFIRMETUR."

Lord MANSFIELD proceeded to mention another Caſe (which had not been cited at the Bar) from Mr. *Foley's* Book abovementioned, Pa. 197 *, between the Pariſhes of *Biſhop's Hatfield*, and St. *Peter's* in St. *Alban's*, *Hertfordſhire*: Where two Juſtices having removed one *Langley* from *Biſhop's Hatfield* to St. *Peter's*, and their Orders being appealed from, it was ſtated, upon the Seſſions-Order, that *Langley* the Pauper, was a *Huntſman* to one Mr. *Arnold*; and that Mr. *Arnold* lived ſometimes in *Weſtminſter*, and ſometimes at his Houſe in *Northamptonſhire*; but that Mr. *Arnold himſelf had no Settlement in St. Peter's* in St. *Alban's*: But that *Langley ſerved the laſt forty Days* of his Year in the Pariſh of *St. Peter's* in St. *Alban's*, WITH *his Maſter Mr. Arnold. This*, the Juſtices at Seſſions thought, gained *no* Settlement for *Langley* in *St. Peter's* in St. *Alban's*: And they quaſhed the Order of the two Juſtices, which removed him thither. But this Court quaſhed that Order of Seſſions; and held *Langley's* Settlement to be *in St. Peter's* in St. *Alban's*, BY SERVING his Maſter, Mr. *Arnold*, the laſt forty Days of his Year THERE; though Mr. *Arnold* the *Maſter*, *had no* Settlement there.

* 'Tis Pa. 217. in the 3d Edition. It was in *H.* 1 *G.* 2. See alſo *Stra.* 794. S. C. and *Poſt.* No. 223. S. P.

ALTON *and* ELVETHAM.

And that is clearly ſo, "That the *Maſter's having no* Settlement "in St. *Peter's*, would not at all vary the Caſe." And that is there ſtated, as the *whole* Point of the Queſtion.

But upon the very Face of that Caſe there ariſes *another Diſtinction.* For the Servant was a *Huntſman*; and Gentlemen who are keen after the Diverſion of Hunting, have their Huntſmen and Hounds frequently removing from one Sporting Country to another, and often kept in *other* Places than where they *themſelves* generally reſide: Nothing is more common. And this Huntſman might go from Place to Place, with his Hounds, into various ſporting Countries, and perhaps NEVER live in the *ſame* Place where his Maſter's Reſidence was. Now *if* this was the Caſe, it is no more than the Caſe of the *Oxford* Stage-Coachman's Servant (1 *Strange* 528:) who gained a Settlement in *Chipping-Wicomb*, where he *performed his Service*; *though the Maſter never* reſided there at all.

And there is *no other* Caſe (as far as has come to my Knowledge,) that interferes with our preſent Opinion upon the Caſe now under our Conſideration.

Therefore I think that upon the Caſe now ſtated in the preſent Order; and for that the Servant NEVER QUITTED his Maſter's Service, but returned with him to Sir *Harry's* own Habitation, and continued in his Service there for ſeveral Years; this is a CONTINUATION *of the original* Service in *Elvetham*; which was begun under the Certificate from *Alton.*

And I lay great Streſs upon the Circumſtance of Sir *H. C.'s* telling the Servant (when the Servant informed him, at *Scarborough*, of his Year's being ended, and propoſed his being re-hired for another Year,) "that it would be *Time enough, when they returned* Home "to *Elvetham:*" Since it appears plainly, by this Anſwer of the Maſter to the Application of his Servant "to make a new Agree-"ment for another Year," That the Contract between them was NOT *finiſhed* and put an End to, at *Scarborough*; but *adjourned and* CONTINUED over.

I alſo lay great Streſs upon the Circumſtance of the Servant's being *(accordingly) re-hired* by his Maſter, upon their Return Home to *Elvetham*; and *continuing* ſeven Years more in his Service at *Elvetham.*

And I likewiſe lay great Streſs upon the Circumſtance of this Pauper's having come from *Alton by Certificate*, to *Elvetham*; where Sir *H. C.* originally hired him; and muſt have hired him AS a Perſon

ſon *not capable* of gaining a Settlement *in Elvetham* by ſuch Hiring and Service under it, by reaſon of his being *under Certificate* from *Alton*. ALTON *and* ELVETHAM.

THEREFORE We are of Opinion that this Rule be diſcharged; And that the ORDER of the two JUSTICES, and alſo the ORDER of SESSIONS confirming it, be BOTH of them AFFIRMED.

And the RULE *was drawn up and entered accordingly.*

BOTH *Orders affirmed.*

Rex *v.* Inhabitants of Bentley. No. 135.

TWO Juſtices removed *John Pickering* and *Elizabeth* his Wife, and *Thomas* their Son, from *Baxterley* to *Bentley* (both in *Warwickſhire*:) And their Order was confirmed by the Seſſions. It was moved, in this Court, to quaſh both theſe Orders. *Monday* 23d *May* 1757.

Mr. *Wheeler* moved it on *Saturday* 5th *February* 1757. An Order of Seſſions, *diſcharging* a former Order of two Juſtices, is final, *only* as between the contending Pariſhes.

The Caſe ſtated was——That this *John Pickering* was hired and ſerved for a Year in *Bentley*; and before the [then] laſt General Quarter-Seſſions, he was removed, by proper Order, from *Baxterley to Stourbridge*, as the Place of his laſt legal Settlement: Which Order of Removal *was* QUASHED, upon an Appeal, by the ſaid [then] laſt General Quarter-Seſſions. And *ſince* the ſaid laſt Seſſions, the Pauper being removed from *Baxterley* aforeſaid *to Bentley*, *Bentley* appealed, and *offered to prove a Settlement in Stourbridge*, by a Hiring and Service for a Year in *Stourbridge*, BEFORE *the ſaid laſt Seſſions*, but SUBSEQUENT *to the ſaid Hiring and Service in* BENTLEY: But the Court of Seſſions REFUSED *to go into it*; being of *Opinion* "That the *Determination* of the Court at the "ſaid laſt Seſſions was FINAL *and* CONCLUSIVE; ſo that no Evi-"dence could be given by the Hamlet of *Bentley*, of a Settlement "in *Stourbridge gained* PRIOR *to* the ſaid laſt Seſſions."

It was objected to theſe Orders, as a Reaſon why they ought to be quaſhed, "that this Opinion of the Seſſions was altogether ER-"RONEOUS:" It being a *ſettled* DISTINCTION, "that though an "ORDER of CONFIRMATION is indeed *concluſive* and binds *all the* "*World*; yet an Order of REVERSAL *or* DISCHARGE is *only con-*"*cluſive on the contending* Parties, and is *final* ONLY *between* the "TWO *Pariſhes* CONCERNED, but does NOT *bind a* THIRD Pariſh." *V. ante*, No. 21. 89. 127. *Accord.*

In

BENTLEY *and* BAXTERLEY.

In Proof of which Diſtinction, the following Caſes in Point were cited, *viz.*

2 *Salk.* 527, Inter Inhab' of *Mynton* and *Stony-Stratford.*

1 *Strange* 232, Between the Pariſhes of *Little Bitham* and *Somerby.*

Carthew 516, Between *Bedingham* and *Kingſton Bowſey* Pariſhes.

Hil. 8 *G.* 2, 1734. *B. R.* * *Rex.* v. *Inhab' of Cirenc ſter.* [It ought to have been ſo cited; not as the Caſe of *Inhabitants of Coln St. Aldwyn's.*]

* *V. ante,* No. 6. *pa.* 17.

And THE COURT unanimouſly agreed to this Diſtinction: (And indeed Mr. *Norton,* who ſhewed Cauſe againſt quaſhing the Orders, did not diſpute it; but only endeavoured to ſhew that the preſent Caſe was not within the general Rule.)

They ſaid it had been long ago fully ſettled and eſtabliſhed; and with very good Senſe and Reaſon, and upon right and juſt Principles. For where the Order of Removal is *confirmed* upon Appeal, and the Pauper thereby fixed upon the Pariſh appealing, ſuch Pariſh ſo charged was *Party to the Litigation,* and has been fully *heard,* and the Law has run it's Courſe as to them; and therefore the Determination is, and 'tis reaſonable that it ſhould be, concluſive *upon* THEM *as* to *all the World,* and *all the World* may *take Advantage* of it: But where the Order of Removal is *vacated and diſcharged,* the *two contending* Pariſhes are indeed *eſtopped and concluded* by the Determination but NO THIRD Pariſh is eſtopped or concluded thereby; for the Point has never been determined AS *to* THEM, who were *no Parties* to the former Litigation, or have *ever been* HEARD *at all.*

Now in the preſent Caſe (as Lord *Mansfield* obſerved) there is only a *negative* Opinion, in a Litigation between *Baxterley* and *Stourbridge,* "That the Pauper was NOT *ſettled at* STOURBRIDGE." But notwithſtanding this, tho' *Baxterley* might not be able to ſhew that the Settl ment was really at *Stourbridge,* yet *Bentley* may be able to give ſtronger Evidence than *Baxterley* could, and may be able clearly to prove it.

† *V. ante,* No. 6. pa. 17.

So, in the Caſe of *Coln St. Aldwyn's* †, that was *negatively* determined "NOT *to be the ettlement of Mary Coats,* in a Litigation be-"tween *Minety* and *Coln St. Aldwyn's:*" (From the former of which Places the two Juſtices had removed her to the latter; and their Order was *diſcharged* on Appeal.) But when two other Juſtices made a ſubſequent Order to remove her *from Cirenceſter* (a THIRD Pariſh)

Pariſh) to this *ſame* Pariſh of *Coln St. Aldwyn's without* her having gained any ſubſequent Settlement there, ſince the former Order; and the Seſſions, upon Appeal from this ſecond Order, were of Opinion " that it was illegal," and diſcharged it; and the Point thereupon came before this Court; Lord *Hardwicke* ſaid, he took the Diſtinction now laid down, to have been clearly ſettled, and he held it to be a reaſonable one: And he added the Reaſon for it, namely, " becauſe a *third* Pariſh might be *able to give better and ſtronger* " *Evidence*, than the former Pariſh could produce, to charge the " Pariſh to which the Pauper had been antecedently removed by " the diſcharged Order; and if the third Pariſh, that is to ſay, *any* " OTHER Pariſh, into which the Pauper ſhould come, had ſuch " ſtronger Evidence, they ought to be at Liberty to uſe it, ſince " all the former Tranſaction was *res inter alios acta*."

So here, *Bentley* may be able to give ſtronger Evidence to fix the Settlement at *Stourbridge*, than *Baxterley* could: And what then paſſed, was *res inter alios acta*.

Therefore this Caſe of *Coln St. Aldwyn's*, and the Reaſon of it, are deciſive in the preſent Caſe.

* *Per Cur.* unanimouſly and clearly—

BOTH ORDERS QUASHED.

* *Mr. Juſtice* WILMOT was now preſent.

Trinity

Trinity Term

30 & 31 Geo. 2. 1757.

No. 136.

Monday 13th *June* 1757.

The *Child* of a *Certificate*-Man, having gained a Settlement by *Apprenticeſhip* in a *third* Pariſh, may afterwards gain a *new* Settlement by *Hiring* and *Service* in the *certificated* Pariſh.

Rex *v.* Inhabitants of Great Torrington.

TWO Juſtices removed *Mary Bray*, Singlewoman, from *Bideford* to *Great Torrington:* And the Seſſions confirm their Order.

It appeared, upon the Special Caſe ſtated, That *Hugh Bray*, and his Wife, and *Elizabeth* and *Mary* their Daughters, came into *Bideford* by Virtue of a *Certificate from Lancraſs directed to Bideford*, and inhabited there ſome Years; and that *Mary* the Pauper, was then *bound an Apprentice*, by the Officers of the Pariſh of *Lancraſt*, by the Allowance of two Juſtices of the Peace, to *Thomas May*, for an Eſtate in *Lancraſs*; and lived in *Great Torrington* aforeſaid *an Apprentice*, for *ſeveral Years*, UNDER *the ſaid Indenture*. That after the ſaid Apprenticeſhip expired, the ſaid *Mary hired* herſelf a *Servant for a Year*, with *Solomon Lyon*, in *Bideford*, and *lived* with him *there*, for ſuch Year, and for eleven Months after.

The Seſſions, being of Opinion "that the ſaid *Mary*, *coming* AT "FIRST in the ſaid Pariſh of *Bideford* UNDER *the ſaid* CERTIFI-"CATE as aforeſaid, *did* NOT *gain* a Settlement there, BY *the ſub-"ſequent Service* as a Covenant-Servant as aforeſaid in that Pa-"riſh," confirmed the ſaid Order.

Mr. *Gould* moved to quaſh both theſe Orders, (on *Wedneſday* 11th of laſt Month;) and urged that the Pauper, *by* having ſerved an Apprenticeſhip in a *third* Pariſh, became *emancipated from her Father's* Family, and *ſui juris*, and quite *clear of the Certificate*; and therefore was *as much* at Liberty to gain a new Settlement in *Bideford*, *as any uncertificated* Perſon whatſoever could be.

Mr. *Huſſey* was to have ſhewn Cauſe why the Orders ſhould not be quaſhed: But he very candidly acknowledged that he had looked

into the Caſes, and was ſatisfied that theſe Orders could not be ſupported, GREAT TORRINGTON and BIDEFORD.

LORD MANSFIELD—Certainly, they can not.

RULE *to quaſh them, made* ABSOLUTE.

V. the next Caſe, *Rex* v. *Inhabitants of Keynſham:* Which is the ſame Point, and determined on the like Conceſſion of the adverſe Counſel. See alſo *ante*, No. 92. 123. *accord.*

Rex *v.* Inhabitants of Keynſham. No. 137.

See the laſt Caſe.——S. P.

MR *Gould* having moved to quaſh an Order of two Juſtices removing *William Harris*, his Wife and their three Children, from *Hanham* in *Glouceſterſhire* to *Keynſham* in *Somerſetſhire*, and alſo the Order of Seſſions confirming it; and Mr. *Norton* now coming to ſhew Cauſe why they ſhould not be quaſhed; this appeared to be the very ſame * Point with the Caſe of, the King againſt the Inhabitants of *Great Torrington.* And *Tueſday* 14th *June* 1757. Determination *ſimilar* to that in the preceding Caſe.

Mr. *Norton* now acknowledged (as Mr. *Huſſey* did Yeſterday) that he could not ſupport the Orders.

Whereupon BOTH *Orders were* QUASHED.

* On 27th *January* 1758, the ſame Point was determined in a Caſe of *Rex* v. *Inhabitants of Aſhchurch in Glouceſterſhire*; where the Caſe was——That *Richard Powell*, Father of *Thomas Powell* the Pauper, came by Certificate from *Churchdean* to *Cheltenham*; and *Thomas* was born, *under* the Certificate at *Cheltenham:* But *Thomas* acquired a Settlement for himſelf at *Aſhchurch*, by a *regular Hiring and Service there*; (that is to ſay, he would have done ſo, *ſuppoſing* the Certificate to be out of the Caſe;) and *afterwards*, he did the like in *Cheltenham.* However, not only the two Juſtices, but alſo the Seſſions, were of Opinion "That *as he was un-*" *der a Certificate* from *Churchdean* to *Cheltenham*, his Hiring " and Service for a Year in *Aſhchurch*, and his ſubſequent

KEYNSHAM and HANHAM.

" Hiring for a Year and Service for a Year in *Cheltenham*, " (though Both of them were regular Hirings for a Year " and Services for a Year) were *insufficient* to gain a Settle- " ment in *Cheltenham*, where he *was born under a Certifi-* " *cate.*" This Opinion was alledged to be wrong: And the Case of *Great Torrington* (*ante*, No. 136,) and the next Case to it (of *Keynsham*, No. 137,) were cited, to prove it. And the Orders were given up, WITHOUT *any Cause shewn.* Indeed it ought to be mentioned, That *another* Objection taken to the original Order of two Justices in that Case was " that it *does not shew* that they had any *Jurisdiction*; it *not* " *appearing* that *Churchdean* is *in their County.*"

Rex *v.* Inhabitants of Uffculme.

No. 138.

Monday 20th *June* 1757.

TWO Justices removed *John Hine* and *Thomazin* his Wife, and *James* and *John* their Children, from the Parish of *Uffculme*, to that of St. *Sidwell* in *Exeter*: And their Order was quashed by the Sessions, upon an Appeal from it.

Being *charged* with, and *paying* the LAND-TAX, for a Tenement *under* the Value of 30 *l.* will gain a Settlement.

The Case stated on the Sessions Order, was this——*John Hine*, the Pauper, PURCHASED *a Tenement* in St. *Sidwell's*: For which, he gave 8 *l.* in Money, and a Note for 4 *l.* more; *amounting*, IN ALL, *to* 12 *l.* He lived there, upon the said Tenement, with his Family; and was then RATED *to the* LAND-*Tax* for the Year 1746, in the following Manner, to wit, " Occupier, late Widow *Hooper's*, " NOW JOHN HINE's *Tenement* 12 *l.*" and for 1747, in the following Manner, to wit, " Occupier, late Widow *Hooper's* Tenement, " NOW JOHN HINE's *Tenement* 12 *l.*" And was *also rated* to the *Poor*-Rate for the Year 1746, as follows, to wit, " Occupier of late " *James Hooper's* Tenement 1 *per* Week:" And for the Year 1747, in the following Manner, " Occupier of the late *James Hooper's*, " NOW HINE's 1 *per* Week." And that the said *John Hine* did, after such Rating, live in the said Parish of St. *Sidwell* for about one Year; and did, during his Residence there, PAY the said Rates, *both* to the *Land*-Tax and the *Poor*, according to the Rates aforesaid; and then sold the said Tenement, and went, with his Family, into the said of Parish *Uffculme*: From whence, he was removed into the said Parish of St. *Sidwell.*

The Seſſions, being of Opinion that the ſaid *John Hine* did *not* gain a Settlement in St. *Sidwell's by being rated and paying* as aforeſaid, the CONSIDERATION *of the ſaid Purchaſe being* UNDER 30 *l.* do THEREFORE vacate the ſaid Order. Uffculme and St. Sidwell.

Mr. *Gould* moved to quaſh this Order of Seſſions, on *Wedneſday* 4th of laſt Month: And he cited

2 *Salk.* 478, *Inter* the Inhabitants of St. *Mary le More* and *Heavy-Tree* in *Devonſhire*: Where it was adjudged that one *Facy*, who, being ſettled at *Heavy-Tree*, went afterwards into the Pariſh of St. *Mary le More*, and took a Houſe there, of one Pound *per Annum*, wherein he lived a Year and a half, and *paid* the *Rates and Taxes* due *for the ſaid* HOUSE, became thereby ſettled at St. *Mary le More*; though his *Perſon* was *not* rated.

[See alſo *Rex* v. *Inhabitants of Chiding fold*, *ante*, No. 132; and the Caſes there cited.]

Serjeant *Davy* and Mr. *Aſton* ſhewed Cauſe againſt quaſhing this Order of Seſſions.

They argued that the Queſtion turned upon two different Acts of Parliament, *viz.* 3 & 4 *W.* & *M. c.* 11. and 9 *G.* 1. *c.* 7. the former whereof, they inſiſted, was *virtually repealed* by the latter.

3 & 4 *W.* & *M. c.* 11. *ſect.* 6. provides and enacts "that being "*charged with and paying* his Share towards the *public Taxes or* "*Levies* of the Pariſh, ſhall be deemed to *gain a legal Settlement* "in ſuch Pariſh, WITHOUT *Notice.*"

9 *G.* 1. *c.* 7. *ſect.* 5. enacts "that *no* Perſon ſhall gain a Settle-"ment in any Pariſh or Place, for or by Virtue of any Purchaſe of "any Eſtate or Intereſt whereof the *Conſideration* doth *not amount to* "30 *l. bonâ fide* paid; for any *longer or further Time* than ſuch Per-"ſon ſhall *inhabit* in ſuch Eſtate."

They urged that this latter Statute *controlled* and *virtually repealed* the former.

They aſſerted that the Pariſh-Officers were *obliged* by 43 *Eliz. c.* 2. *to rate* this Man as Occupier; and that by 17 *G.* 2. *c.* 38. *ſect.* 4. either the Man *himſelf* may appeal, if left out of the Rate, or *other* Perſons may appeal from it, as an unequal Rate.

And it is againſt Reaſon, to argue that their Rating him ſhould be a *Recognition* of him as a Pariſhioner; when they could *neither remove* him, *nor help taxing* him.

LORD MANSFIELD and *Mr. Juſtice* FOSTER aſked whether there had been any Determinations upon *Certificate-Perſons* charged

UFFCULME and ST. SIDWELL.

with and paying Pariſh-Rates, in the ſmall Interim between the two Certificate Acts of 8 & 9 *W.* 3. *c.* 30. and 9 & 10 *W.* 3. *c.* 11. The latter of which, only recites, in general, "that ſome Doubts "had ariſen upon the Conſtruction of the former, *by* what *Acts* "ſuch Certificate-Perſon might procure a legal Settlement in the "Pariſh to which he came." For if there were any ſuch inter- "mediate Determinations, they would ſerve to guide the preſent.

In order to look into which, it ſtood over with a

Cur' adviſare vult.

And now LORD MANSFIELD delivered the Reſolution of the Court.

It will be neceſſary to conſider how the Law ſtood before the 9 *G.* 1. *c.* 7. Becauſe the Seſſions ſeem to have confounded different Acts of Parliament, and different Qualifications.

Now before that Act, no Man was removable from his *own*; be the Value of the Purchaſe of it, *never ſo ſmall and inconſiderable.* And there were then *other* Ways alſo, of gaining Settlements: As, under 3 & 4 *W.* & *M. c.* 11. *ſect.* 6. either by ſerving a *public annual Office* in the Pariſh, for a whole Year; or by being *charged with and paying a Share* towards the public Taxes or Levies and Burdens of the Pariſh.

But this Act of 9 *G.* 1. was levelled *only* againſt *fraudulent Purchaſes*, of *ſmall Value*, made in order to gain Settlements: And it declares that Purchaſes of leſs than 30 *l.* Value, *bonâ fide* paid, ſhall not gain a Settlement for any longer Time than the *Inhabitancy* thereupon ſhall continue; *After* which, the Purchaſer ſhall be liable to be removed to his former legal Settlement prior to ſuch Purchaſe and Inhabitancy upon it. And the eſtabliſhed Conſtruction of this Act has been purſuant to the Intention of the Legiſlature, *to prevent* FRAUDULENT Purchaſes: And therefore *Deviſes*, or other *ſuch* Methods of coming to Eſtates, have *not* been conſidered AS *Purchaſes within* this Act; becauſe *they* are NOT *fraudulent* *.

* *V. Rex* v. *Inhabitants of Ilmington*, *Poſt.* No. 182.

Whereas the preſent Settlement is claimed by being RATED *and having* PAID *towards the public Taxes* of the Pariſh: Which is quite a *different Method* of gaining a Settlement.

The Man himſelf is here *perſonally* rated: The Tax is laid upon a Tenement "late *Hooper's*, *now John Hine's*." But if he had been only rated *as Occupier*, without adding his Name, yet ſurely that would imply Notice of the Man's being an Inhabitant.

But

Uffculme and St. Sidwell.

But it is objected "that the Pariſh were OBLIGED *to rate him.*"

Now I *deny* that they were *obliged* to rate him, *if* he was a Man of no Abilities: and he could not oblige them, (even by 17 *G.* 2. *c.* 38.) to rate him, if he was *not* FIT *to be rated.*

There is great Analogy between *this* Caſe, and Caſes upon the Certificate-Act. And though there are no Caſes upon that Act to be found, between the making of it and of it's explanatory Act, yet that explanatory Act (9 & 10 *W.* 3. *c.* 11.) does, of itſelf, ſufficiently determine that a Certificate-Perſon WOULD *have gained a Settlement* by being rated and having paid towards the public Taxes of the Pariſh, notwithſtanding the former Certificate-Act, of 8 & 9 *W.* 3. *c.* 30. *That* Act therefore goes a great Way towards the Conſtruction of *this* Act.

And WE are ALL clear that *this* Act only means to put a Negative upon a Perſon's gaining a Settlement by making a *ſmall Purchaſe*, with a *fraudulent Intention* to gain a Settlement thereby, in the Pariſh where ſuch Purchaſe is made; and that it does NOT *affect any* OTHER *Method* of gaining a Settlement.

And indeed it is but reaſonable that Perſons who have been rated and have paid towards the public Taxes and Levies of a Pariſh, ſhould receive Aſſiſtance *from that* Pariſh, when they become neceſſitous themſelves.

Order of Seſſions QUASHED:
Order of the two Juſtices AFFIRMED.

[As to *Rating*—*V. Rex* v. *Inhabitants of Painſwick*, *Poſt.* No. 148. And ſee the Caſe of *Rex* v. *Inhabitants of Worth*, *ante*, No. 27. preciſely in Point. See alſo the ſeveral Caſes referred to at the Bottom of pa. 6.

Rex *v.* Inhabitants of Milwich. No. 139.

The ſame *Monday* 20th *June* 1757.

Hiring *for eleven Months, with an Agreement to give in another Month's Service*, is a *Hiring for a Year*, and will gain a Settlement.

TWO Juſtices removed *Thomas Thacker* and *Margaret* his Wife, and *Anthony*, *Thomas*, *James*, *William*, *Hannah*, and *Mary*, their Children, from the Vill of *Creyton* in the County of *Stafford* to *Milwich* in the ſame County: And the Seſſions confirmed their Order, upon this Caſe ſtated——

Thacker was hired by Mr. *Blurton* of *Milwich*, *for* ELEVEN *Months*, for 4 *l.* 10 *s.* And it was agreed between them, "That "*Thacker* ſhould GIVE *Mr. Blurton a* MONTH's *Service* IN, *beyond* "*the eleven* Months." *Thacker ſerved Mr. Blurton* the eleven Months, *in Milwich*; and *alſo all the given-in Month*, *except* the laſt three Days:

MILWICH and CREYTON.

Days: *And as to those three Days, Thacker could not say* whether he ſerved them, or went away without ſerving them; but *he received the whole* 4 *l.* 10 *s.* Wages.

The Seſſions confirmed the Order; being of Opinion "that this "was a *Hiring for a Year*, and a *Service for a Year*."

On *Saturday* 5th *February* 1757, Mr. *Norton* moved to quaſh theſe Orders; and had a

RULE *to ſhew Cauſe*.

He made two Objections.

1ſt, This is not a good HIRING FOR A YEAR, within 3 & 4 *W. & M. c.* 11. being *only* for eleven Months.

The Seſſions ſeemed to conſider the Hiring as *fraudulent*; but have NOT *ſtated* it to be ſo: Therefore this Court can NOT *preſume* it to be fraudulent.

Foley 137. 10 *Mod.* 392. S. C.

In 1 *Strange* 83, *Rex* v. *Inhabitants of Haughton*—ſeveral Hirings and Service for *eleven Months* gained no Settlement.

In 2 *Salk.* 535. between the Inhabitants of *Dunſfold* and *Ridgwick*, two ſeveral Hirings for Half a Year each, and Service for a Year, gained *no* Settlement. And by 1 *Strange* 143, between the Pariſhes of *Combe* and *Weſt Woodhay*—There muſt be a *complete Hiring and Service for a Year*, in order to gain a Settlement.

2dly, 'Tis not a good SERVICE for a Year: Becauſe *three* Days are wanting *at the* END *of it*.

In 2 *Strange* 1022, between the Pariſhes of *Seaford* and *Caſtle-Church* *: Going away twelve Days before the End of the Year prevented a Settlement; though all the Wages were paid. The Servant's going away before the *End* differs from the *Middle* of the Year. In the former Caſe the Service is diſcontinued: In the latter, not; but the Abſence is purged by the Maſter's receiving him again †.

* *Vide ante*, pa. 68. No. 20.

† *V. ante*, pa. 70, 71. and 324.

So that, upon the whole State of the Caſe, it is plain, here was *neither* a HIRING *for a Year*, *nor* a SERVICE *for a Year*: Whereas *both* theſe are requiſite to gain a Settlement by 3 & 4 *W. & M. c.* 11.

Mr. *Gilbert*, *contra*, for ſupporting the Orders, inſiſted——

1ſt, That this was clearly a Contract to *ſerve for a Year*; and cited *Co. Litt.* 42. *b.* "If a Man retain a Servant *generally*, without "expreſſing *any Time*, the Law ſhall conſtrue it to be of *one Year*." And ſo it was agreed in the Caſe of *Rex* v. *Inhabitants of Wincunton* ‖.

‖ *V. ante*, pa. 299, 300. No. 107.

So,

So, a *conditional* Hiring has been holden a good Hiring for a Year. Milwich and Cretton.

2dly, Indeed 8 & 9 *W.* 3. *c.* 30. requires a SERVICE *for a Year*. But yet the preſent Caſe is within the ſettled Reſolution of this Court. It was ſolemnly determined, in *P.* 7 *G.* 1. 1 *Strange* 423, *Rex* v. *Inhabitants of Iſlip*, "that Abſence for the *laſt three Days*, "though *againſt the Conſent* of the Maſter, did *not* hurt the Set-"tlement."

And THE COURT, *viz.* Lord *Mansfield*, Mr. Juſtice *Deniſon*, and Mr. Juſtice *Foſter*, were extremely clear,

1ſt, That this Agreement (taken all together) is a manifeſt Contract "*to ſerve* FOR A YEAR;" notwithſtanding the Form of Expreſſion: (Which, by the way, they conſidered as an Attempt to prevent the Man's gaining a Settlement, by a very paltry Evaſion.) The real Queſtion is no more than "Whether eleven Months and "one Month make twelve Months." there are *no particular technical* Words neceſſary to make a Hiring for a Year. The *Subſtance* of this Agreement is, "to ſerve twelve Months, for 4*l.* 10*s.*" And what ſignifies the Variation of *Expreſſion*? Every Contract to ſerve, is a Contract to ſerve * *for a Year*; unleſs there be ſomething to explain it otherwiſe. Now certainly here is nothing to explain it otherwiſe. And Mr. Juſtice *Foſter* obſerved that this was an *entire ſingle* Contract; and not like to the Caſes of different Contracts at different Times: And he added, that no Action would have lain for the Wages, till the *End* of the *whole* twelve Months.

* *V. Co. Lit.* 42. *b.*

2dly, That as to the Servant's *going away three* DAYS *before the End of the Year*—The State of the Fact *don't ſupport* the Objection: For it don't appear that he *did* go away before the End of the Year. It is only ſtated "that he *could not ſay* whether he ſerved "thoſe three Days, *or* went away without ſerving them." But it is poſitively ſtated "that *he received the whole* 4*l.* 10*s. Wages*:" Which, at leaſt, ſeems to imply the *Maſter's Conſent* or Permiſſion. Whereas in the Caſe of *The King* v. *The Inhabitants of Iſlip*, *P.* 7 *G.* 1. in 1 *Strange* 423, it was holden that the Servant's going away three *Days before* the End of his Year, *directly in Oppoſition to his Maſter's Will and expreſs Prohibition*, upon a reaſonable Occaſion, and upon a reaſonable Requeſt (unreaſonably refuſed,) *did* NOT vitiate the Settlement.

Per Cur. unanimouſly—

Both Orders AFFIRMED.

Vide ante No. 107. and the Caſes there cited, pa. 301.

As

MILWICH *and* CREYTON.

[As to 2d Objection——Going away before the *End* of the Year; and particularly, as to paying the *whole* Wages—See *Rex* v. *Inhabitants of Chriſtchurch*, *Part* 4. Vol. 2. pa. 945, of my printed *Reports*; and *poſt*. No. 158.

It may be not improper to mention that there was a Caſe in *Michaelmas* Term 1756, 30 G. 2. *Rex.* v. *Inhabitants of Childcompton*, where the Servant came three Days too late into the Service; and afterwards abſented himſelf a Week; and then another Week, and about a Week more, at ſeveral Times. Which Abſence the Seſſions held to vitiate the Settlement: But Mr. *Burland* argued "that they "did *not*;" and cited the Caſes of *Iſlip*, and of *Goodneſtone*, (*ante*, No. 85,) and of *Hanbury*, (*ante*, No. 115.) But I have not inſerted this Caſe; becauſe it was *never litigated*. ——Mr. *Burland* made his Motion "to quaſh the Order "of Seſſions," upon *Thurſday* 25th *November* 1756: And on *Friday* 4th *February* 1757, his Rule was made abſolute, WITHOUT *any Defence*. So that I conſidered it as *no Authority*.

Michaelmas Term

31 Geo. 2. 1757.

No. 140. Rex *v.* Inhabitants of Lower Swell.

Saturday 26th *Nov.* 1757.

One of the ſeveral next of Kin can't acquire a Settle nent *before* Adminiſtration.

MR. *Vernon* moved, on *Thurſday* 14th of *June* 1757, to quaſh an Order of Seſſions quaſhing an original Order made for the Removal of *Hannah Dunce*, and *Hannah*, *Sarah*, *John*, *Ambroſe*, and *Mary* her Children, from *Lower Swell* in the County of *Glouceſter* to the Pariſh of *Turk Deane* in the ſame County; and to affirm the original Order.

The

Lower Swell and Turk Deane.

The Substance of the Case, as stated upon the Sessions-Order, was—That the Remainder of a *Term of two thousand Years* in a *Cottage at Lower Swell* had been in the Year 1721, (before the Statute of 9 G. 1. c. 7.*) *purchased* by one *Ambrose Dunce* for 15*l.* 10*s.* which *Ambrose Dunce* afterwards died intestate on 18th *October* 1736; having lived therein till his Death. That this *Ambrose Dunce* left a Widow, and five Children, namely *John Dunce* (the Husband of the Pauper *Hannah* and Father of the five Pauper Children) and one other Son, and three Daughters. That after the Death of the said *Ambrose Dunce*, his said Widow continued and lived in the said Cottage from that Time until the Time of her Death; which happened about two Months after the Death of her said Husband. That after the Death of the said *Ambrose Dunce's* Widow, a Sister of the said *Ambrose Dunce*, and his said three Daughters entered on the said Cottage, and lived therein for about three Years afterwards. And then the said *John Dunce*, the Son of the said *Ambrose*, (*and which said John, before and to that Time*, LIVED *in the Parish of Turk Deane*,) entered on the said Cottage; and he and his said Wife lived therein, from that Time until his Death; which was seventeen Years or thereabouts; and then the said *John Dunce* died *intestate*. Upon *John's* Death, his Widow *Hannah Dunce*, the present Pauper, and her said five Children (who were all born in *Lower Swell*) continued and lived in it above forty Days, *without* taking out any *Administration*; until they were removed by the present original Order. AFTER such Removal, she *took out Administration* to her Husband *John*: But *no* Letters of Administration to *Ambrose* were ever granted either to the said *John*, or to the said *Hannah*, or to any one else. The three Daughters of *Ambrose* are all now living. The Sessions discharged the said original Order of Removal.

* *V.* Sect. 5.

Mr. *Vernon* alledged that *no* Settlement was gained by *John Dunce* or his Widow *Hannah*, in *Lower Swell*, for want of taking out Administration. To prove this, he cited two Cases; *viz. South Sidenham* and *Lamerton*, *Trin.* 3 G. 1. and *Widworthy* and *Farringdon*, *Trin.* 10. 11 G. 2. [*V. ante*, No. 34, pa. 109.] The latter, he said, was directly in Point.

RULE *to shew Cause.*

Mr. *Aston* now shewed Cause. He observed that the Order of Sessions runs thus—("*Which John Dunce*, before he *came to live* in this "Cottage, LIVED at *Turk Deane*.") And this is *only in a Parenthesis*: So that it is *not expressly stated* "that he *was* SETTLED at "*Turk*

Lower Swell and Turk Deane.

"*Turk Dean.*" Whereas in the Caſe of *Widworthy* v. *Farringdon*, *Tr.* 10 & 11 *G.* 2. *B. R.* it was expreſsly ſtated "that the Man "was SETTLED at *Farringdon.*" And conſequently that Perſon's DERIVATIVE Settlement under his Father, was *gone*; and therefore HE ought to have taken out Adminiſtration. But the ſame Concluſion will not hold in the preſent Caſe. For here *John Dunce* does *not* at all appear to have had *any* OTHER Settlement, than the *derivative* Settlement under his Father *Ambroſe*; upon which, he himſelf, the Son, had lived ſeventeen Years, before his Death; and if he had lived there only three Years more, it had been a good Title even under an *Ejectment*.

Mr. *Vernon contra*—He inſiſted on the Caſes of *South Sidenham* v. *Lamerton*, *Tr.* 3 *G.* 1. *B. R.* and *Widworthy* v. *Farringdon*, to prove, "That the *taking out Adminiſtration* was neceſſary." For the two Juſtices have adjudged the Settlement of *John*'s Widow and Children to be in *Turk Deane:* And *Turk Deane* muſt be taken to be ſo, upon the whole of this Caſe. The Seſſions *give a* BAD *Reaſon for diſcharging* this original Order *. Therefore the Order of Seſſions is ill; and the Original Order muſt ſtand.

LORD MANSFIELD—No: They do not give it * AS *a* REASON; but *ſtate* it AS *a* FACT. And upon the Facts ſtated, it does *not* appear that *John* was *ſettled* at *Turk Deane:* On the contrary, it appears that *Ambroſe's* Son *John Dunce* and all his Family, lived with *Ambroſe, at Lower Swell,* and *gained a derivative Settlement* THERE under him.

The THREE OTHER JUDGES were unanimouſly and clearly of the ſame Opinion.

Per Cur'. unanimouſly——
ORDER *of* SESSIONS (diſcharging the Order of two Juſtices) AFFIRMED: And
The Original ORDER, QUASHED.

V. Poſt. No. 143, *Rex* v. *Inhabitants of Cold Aſhton*, *H.* 31 *G.* 2. S. P. as to taking out Adminiſtration. See alſo *Poſt.* No. 243. *pa.* 785. and *Dougl.* 609. S. P.

* The Words are "It is ordered by this Court, that the ſaid Order be and is hereby diſ-"charged; *The Caſe appearing to be,* That, *&c.*"

Hilary

Hilary Term

31 Geo. 2. 1758.

Rex *v.* Inhabitants of Biſhop's Hatfield. No. 141.

Thurſday 9th *Feb.* 1758.

Hiring for a Year, with *Liberty* for the Servant to *let* himſelf for the HARVEST-MONTH to any *other* Perſon, will *not* gain a Settlement.

MR. *Wade* ſhewed Cauſe againſt quaſhing an Order of two Juſtices made for the Removal of *James Arnold*, *Anne* his Wife, and *Elizabeth*, *Mary*, and *Anne*, their Children, from *Saundridge* to *Biſhop's Hatfield*, (both in *Hertfordſhire*;) and an Order of Seſſions confirming it: Both which Orders Mr. *Yates* had moved to quaſh, as being founded upon a miſtaken Judgment.

The State of the Caſe was this—*James Arnold* was hired to one *Parſons*, a Pariſhioner of *Saundridge* at 5 *l.* for one Year, to wit, from *Michaelmas* 1752, to *Michaelmas* 1753; *with Liberty to let himſelf for the* HARVEST-MONTH, *to any* OTHER *Perſon*. That the ſaid *James Arnold* ſerved the ſaid *Parſons* until the ſaid Harveſt-Month; and, a little before the ſaid Harveſt, *without* the Knowledge of the ſaid *Parſons*, *hired* himſelf *for* the ſaid HARVEST-MONTH, to one *Thrale* of the SAME *Pariſh*: But *went*, *with* the Knowledge of the ſaid *Parſons*; and *worked with the ſaid Thrale for the ſaid Harveſt-Month*; and received Wages for the ſaid Harveſt-Month. That *in* the ſaid Harveſt-Month, the ſaid *Arnold brewed for the ſaid Parſons*: And *after* the ſaid Harveſt-Month *Arnold* ſerved the ſaid *Parſons* for the *Remainder* of the Year. And the ſaid *Arnold* LODGED *in the ſaid* PARSON'S *Houſe*, in the ſaid Pariſh of *Saundridge*, during the *whole* Year: And at the End of the ſame, the ſaid *Arnold* received the ſaid 5 *l.* for his Year's Wages.

Whereupon the Seſſions adjudge that the ſaid *James Arnold*, under the ſaid Hiring and Service with the ſaid *Parſons*, in the ſaid Pa-

BISHOP'S HATFIELD *and* SAUNDRIDGE.

riſh of *Saundridge*, did *not* gain any Settlement in the ſaid Pariſh of *Saundridge:* And therefore they confirm the Order of the two Juſtices, and diſallow the Appeal.

Mr. *Wade* argued, That this was *not a complete Hiring* for a Year, AND *Service* for a Year. To prove this, he cited 1 *Strange* 143, *Rex* v. *Inhabitants of Weſt Woodhay*—[between the Pariſhes of *Coombe* and *Weſt Woodhay:*] Where a Hiring "from the *Thurſday after Mi-*"*chaelmas*, till the next *Michaelmas*," was holden inſufficient. 1 *Strange* 83, *Rex* v. *Inhabitants of Houghton*——Several Hirings, each for eleven Months, were holden inſufficient: And the Court ſaid "It would be dangerous to depart from the *Words* of the Sta-"tute." 2 *Strange* 1022, between the Pariſhes of *Seaford* and *Caſtlechurch*†—"Going away twelve *Days* before the *End* of the "Year, prevents the Gaining a Settlement."

† *V. ante.* pa. 68. No. 20.

He agreed that where there is a *regular Hiring* for a Year, the Court will not be over rigid as to the *Service*. 2 *Strange* 1232.—— Between the Pariſhes of St. *Peter* in *Sandwich* and *Goolaſton* [*Goodneſtone*] in *Kent* was ſo §: There, the Servant went to the Herring-Fiſhery, with his Maſter's Leave. 1 *Strange* 423, *Rex* v. *Inhabitants of Iſlip* were ſmall Abſences; and after a compleat and *perfect Hiring* for a whole Year. Now this is only a *Hiring* for *eleven Months*; and a *Service for eleven Months*.

§ *V. ut ſupra*, pa. 251, No. 85.

Mr. *Yates contra*—The *Maſter* was bound; though the Servant was at Liberty: The Servant was *not removable*. He *ſerved* his Maſter, in *ſome* Reſpects, *even* DURING *this Month*.

LORD MANSFIELD—It is, in Effect, *only* a *Hiring* for *eleven* Months. And the *Harveſt*-Month is the *principal* Month of the Year.

It is ſafeſt, to *keep to the Statute*. If we allow *this*, we ſhall not know where to ſtop.

Mr. Juſtice DENISON concurred. And he obſerved that tho' the Conſtruction had been, in many Reſpects, favourable *as to the* SERVICE, yet they had been ſtricter as to the *Hiring:* And if this was allowed to be a *good* HIRING, it would tend to enervate the Act, and ſet the Conſtruction quite looſe.

Mr. Juſtice FOSTER agreed, in both, with Mr. Juſtice *Deniſon:* And he mentioned ſome Inſtances of the former; and particularly the Caſe of *Weſt Woodhay*, abovementioned. But *this* is only a HIRING *for eleven* Months.

Mr.

Mr. Juſtice WILMOT concurred—It does not turn upon the Obligation the *Maſter* was under; but upon the Obligation the *Servant* was under; And the Servant was *not* obliged to ſerve the whole Year. It is very clear that this is NOT A HIRING *within* the Act.

BISHOP'S HATFIELD *and* SAUNDRIDGE.

Per Cur. unanimouſly—

RULE DISCHARGED: And BOTH ORDERS AFFIRMED. *

* *Vide poſt*, No. 246. S. P.

Rex *v.* Inhabitants of Auſtrey. No. 142.

Monday 13th *Feb.* 1758.

A *Pariſh Apprenticeſhip* cannot be *diſſolved*, whilſt the Apprentice is under Age, without the *Conſent* of the Parith Officers.

TWO Juſtices removed *Francis Orton*, *Lucy* his Wife, and *John* their Son, from *Auſtrey* to *Grindon* (both in *Warwickſhire*:) Which Order was quaſhed by an Order of Seſſions, upon an Appeal.

The Special Caſe ſtated was this—The Pauper *Francis Orton* being at that Time a poor Child *about* TEN *Years of Age*, was *in April* 1744, legally bound Apprentice, BY *the Churchwardens and Overſeers* of the Poor of the Pariſh of *Grindon*, to *Samuel Lytball* OF *the ſaid Pariſh of* GRINDON, UNTIL *he ſhould attain his Age of* 24 *Years*, *purſuant to the Statute of the* 43*d of Elizabeth*: Which Indenture was duly approved of by two Juſtices of the Peace, purſuant to the Directions of the ſaid Statute.

The ſaid Pauper ſerved and inhabited with his ſaid Maſter, in *Grindon*, under the ſaid Indenture, TILL *Michaelmas* 1754; at which Time the ſaid *Lytball*, *the Maſter*, *in Conſideration of* 40 *s. then paid him by the Pauper*, *agreed to* DISCHARGE *the ſaid Pauper from his ſaid Apprenticeſhip*: Which *Receipt and Diſcharge* was *indorſed and written* BY *the Maſter*, on the Back of the ſaid Indenture; which he *then* DELIVERED *up to his ſaid Apprentice*. And the ſaid Pauper *then left* his ſaid Maſter, *and hired himſelf for a Year*, *and ſerved for a Year*, at the Pariſh of *Higham*. Afterwards, *viz.* at *Michaelmas* 1755, he *hired himſelf for a Year* to *Lilly*, in the Pariſh of *Auſtrey* aforeſaid, *and ſerved the ſaid Year* IN *the ſaid Pariſh*; and *received* his Year's Wages.

The Pauper is NOW [12th *July* 1757.] upwards of 23 Years of Age: But *hath* NOT *attained the Age of* 24 *Years*.

Upon

AUSTREY and GRINDON.

Upon this Caſe, the *Seſſions* QUASHED the Order of two Juſtices. And Mr. *Wheeler* had, (on 27th *January* laſt,) moved to quaſh this Order of Seſſions, and to affirm the Original Order.

The Objection to the Seſſions-Order was "That the Maſter and "the Apprentice could not agree to part, nor could the Maſter diſ-"charge *ſuch* an Apprentice as this Lad was, *without the Conſent* "of the *Pariſh-Officers:* And conſequently he gained no Settle-"ment, by his being hired for a Year and ſerving for a Year, in "*Higham* or in *Auſtrey*."

RULE *to ſhew Cauſe.*

Mr. *Caldecott* and Mr. *Gueſt* now ſhewed Cauſe.

They thus anſwered the Objection.

1ſt, The Apprentice became *ſui Juris*, by *this Diſcharge.*

No Intereſt at all remains in the Pariſh-Officers: Their Power is only a *limited* Power. And a Pariſh-Child thus bound agreeable to 43 *Eliz.* is upon the ſame Foot as if he had *bound himſelf:* And *when of full Age*, is at Liberty to *conſent* to his own Diſcharge, and thereby to put an End to the Apprenticeſhip.

2dly, But if not, yet the Service being *by his Maſter's Leave and Conſent*, it gains him a Settlement in the Place where it was *performed:* Which was firſt, in *Higham*; and afterwards, in *Auſtrey.*

Firſt—The Maſter *alone* has Power to diſcharge the Apprentice. 1 *Strange* 48. *Rex* v. *Barnes* is an Authority to prove that the Maſter may ASSIGN the Apprentice, though bound out by the Juſtices; (the Apprentice *conſenting* to it.) And the ſame Reaſon holds for *diſcharging* him, as for *aſſigning.*

Secondly—It is, at leaſt, a *Leave and Conſent* of the Maſter to the Apprentice's *Serving in this Pariſh:* And *therefore the* LAST 40 *Days Service* makes the Settlement. This was the very Caſe between the Pariſhes of *St. George Hanover Square* and *St. James**, in 2 *Strange* 1001; where *Alice Wheeler*, a Pariſh Girl, being bound out, her Maſter let her out for Hire to a Perſon in *Marybone*, where ſhe reſided above 40 Days: And the Court held her to be ſettled in *Marybone.*

* *Vide ante*, No. 5. pa. 12.

Mr. *Wheeler*, Mr. *Vernon*, and Mr. *Norton*, *contra*, argued for quaſhing the Order of Seſſions; and in Support and for Affirmance of the Order of two Juſtices.

The Conſtruction attempted by the other Side, they ſaid, would invalidate the Act of 43 *Eliz. c.* 2. which gives Power to bind ſuch poor Lads, *till* 24 Years of Age. [See *Sect.* 5th.]

They

AUSTREY and GRINDON.

They alledged that the Pariſh-Officers, and even the Public *are intereſted* in this. And ſuch an Apprentice *can not be diſcharg'd* without the *Conſent* of the Pariſh-Officers, who bound him out. 1 *Salk.* 381. *Domina Regina* v. *Gould*, the Court allowed an Indictment, for Diſobedience, "in not receiving and providing for "ſuch an Apprentice." And they alſo cited 20 *G.* 2. *B. R. Rex.* v. *Trevelyan:* [But that Point was not there determined.] The Intereſt of the Churchwardens and Overſeers is a *remaining* Intereſt.

2dly, Here is no *expreſs* Conſent by the Maſter to this Service. And therefore the laſt 40 Days ſervice ſhall *not* gain a Settlement; for want of ſuch Conſent. 2 Lord *Raym.* 1352, and 2 *Strange* 582, S. C. the Caſe of the Pariſh of *Buckington:* Which is in Point.

Lord MANSFIELD aſked Whether the Apprentice was OF *Age*, or UNDER *Age*, at the *Time* of his *conſenting* to the Diſcharge: For the whole depends upon THAT.

Mr. *Norton*—He was UNDER *Age*, at the Time of his conſenting to the Diſcharge: As is evident, by comparing the Dates ſtated; (which ſhew that he muſt have been *about half a Year under.*)

Lord MANSFIELD——*Then* there is nothing in it. If he was UNDER *Age*, his *Conſent* was quite out of the Caſe; and is exactly upon the ſame Foot, as if he had given NO *Conſent at all:* For the Conſent of an *Infant*-Apprentice can ſignify nothing, nor be of any Validity,

2d Point—Then if his *Conſent is of no Validity*, and *as Nothing at all*, his Subſequent *Services*, under the *Hirings* ſtated in the Order, can never be conſidered AS *performed by the Maſter's** LEAVE AND CONSENT; and *ſo*, as being a Service of his Maſter UNDER *the Indenture*: Becauſe this is no *expreſs and explicit* Leave and Conſent given by the Maſter to the † *particular* Service; but was intended to be quite general, and is even *founded* in a MISTAKEN *Apprehenſion* "That the Apprentice COULD *conſent* to his "being diſcharged;" which he, being an Infant, was not capable of doing.

AND THE ‖ TWO OTHER JUDGES being of the ſame Opinion,

Per Cur.——

ORDER OF SESSIONS QUASHED:
Original ORDER AFFIRMED.

* *V.* 2 Lord *Raym.* 1352, and 1 *Strange* 582, S. C. the Caſe of *Buckington* Pariſh.

† Which was the Caſe in *Rex.* v. *Inhabitants of Fremington, ante*, No. 133.

‖ Mr. Juſtice *Foſter* was abſent.

See the ſeveral Caſes referred to *at* the Bottom of *pa.* 16. and *particularly*, No. 95. 180. 239.

No. 143.

Rex *v.* Inhabitants of Cold Aſhton.

The ſame *Monday*, 13th *Feb.* 1758.

A *Certificate*-Man may gain a Settlement, by *Poſſeſſion* of a Tenement for 20 Years, in the *certificated* Pariſh; but not by ſerving the Office of Tything-Man *there*, for *Half* a Year.

TWO Juſtices made an Order to remove *Mary Harriſon*, Widow, and her four Children, (*Charles*, *George*, *William*, and *Thomas Harriſon*,) from *Cold Aſhton* to *Woodcheſter* (both in *Glouceſterſhire*:) And the Seſſions, upon an Appeal from this Order, diſcharged it.

The Special Caſe ſtates——That in *July* 1725, *Daniel Harriſon* and *Mary* his Wife, and *William Harriſon* their Son, went from *Woodcheſter* to *Cold Aſhton* with a *Certificate from Woodcheſter*, directed to *Cold Aſhton*, acknowledging "That they the ſaid *D. H.* "and *Mary* his Wife, and *William H.* their Son, and ſuch other "Children as they the ſaid *Daniel H.* and *M.* his Wife ſhould have "afterwards born in *Cold Aſhton*, were Inhabitants legally ſettled "*in Woodcheſter.*"

That the ſaid *Daniel Harriſon* and *Mary* his Wife and *William H.* their Son, lived in the ſaid Pariſh of *Cold Aſhton* under the ſaid Certificate, from the ſaid Month of *July* 1725, till about *Chriſtmas* 1728: At which Time, *William Fido, the Father of the ſaid Mary* the Wife of the ſaid *Daniel Harriſon*, DIED INTESTATE, *leaving the ſaid* MARY HIS DAUGHTER AND FIVE OTHER *Children*; And was at the Time of his Death poſſeſſed of and intitled unto a TENEMENT and 2½ *Acres of Land*, of the yearly Value of 6 *l.* 17 *s.* ſituate in *Cold Aſhton*, for the *Remainder of a* TERM of 99 *Years determinable* on the Death of himſelf and of the *ſaid* MARY *his Daughter*, the Wife of the ſaid *Daniel Harriſon*.

That upon the Death of the ſaid *William Fido*, the ſaid *Daniel Harriſon* and *Mary* his Wife, and the ſaid *William Harriſon* their Son, (he being then about 5 Years old) ENTERED *upon and* TOOK POSSESSION *of the ſaid Tenement and Land*; And the ſaid *Daniel Harriſon* and *Mary* his Wife *have* LIVED IN *and* OCCUPIED *the ſame, ever ſince, until this Time.*

That there being a CUSTOM in the Hundred of *Puckleburch* in which the ſaid Pariſh of *Cold Aſhton* lies, "for the *Occupiers* of "*ſmall Tenements* within the ſaid Hundred to ſerve *the* OFFICE *of* "TYTHINGMAN *for* HALF *a Year* ONLY *at a Time*;" the ſaid *Daniel Harriſon*, about 25 *Years ago*, *ſerved the* OFFICE *of* TYTHINGMAN for the ſaid Pariſh of *Cold Aſhton for* HALF *a Year*

ONLY; and about *five Years ago, ſerved the ſame Office*, for the *ſame Pariſh, for* ANOTHER HALF *Year* ONLY.

Cold Ashton *and* Wood-cheſter.

But that NO *Adminiſtration* of the Goods or perſonal Effects of the ſaid *William Fido* was ever granted to, or taken out *by the ſaid Daniel Harriſon* and *Mary* his Wife, or either of them, *or any other* Perſon.

That the ſaid *William Harriſon* lived with the ſaid *Daniel H.* and *Mary* his Wife, in the ſaid Tenement till ABOUT 8 OR 9 *Years ago:* When he married the abovenamed *Mary* (his now Widow;) by whom he had the Iſſue abovenamed, *Charles, George, William*, and *Thomas H.* their ſaid Children.

That after the Marriage of the ſaid William Harriſon, the Father of the Pauper Children, with the ſaid *Mary* his Wife, *they* lived in the ſaid Pariſh of *Cold Aſhton, ſeparate and apart from* the ſaid *Daniel H.* and *Mary* his Wife, *until the Death of the ſaid William*; which happened about 11 Year ago.

And the ſaid *Mary the* WIDOW *of the ſaid William H.* the Father, and her ſaid 4 Children, having *after the Death of the ſaid William H.* the Father, *become actually chargeable* to the ſaid Pariſh of *Cold Aſhton*, they the ſaid *Mary* the *Widow*, and her ſaid 4 Children were, by the ſaid Order of two Juſtices, removed from *Cold Aſhton* to *Woodcheſter*; they the ſaid *William Harriſon* the Father, or his ſaid Widow or Children, NOT *having gained any* Settlement, AFTER *the giving of the ſaid Certificate*, except as aforeſaid.

Mr. *Huſſey* and Mr. *Norton* had (on 27th *January* laſt) moved to quaſh this Order of Reverſal, and to affirm the Original one.

They had objected, That no Settlement was gained in *Cold Aſhton*. For that *Daniel Harriſon* could have no Right to the Term of 99 Years, *for want of Adminiſtration:* And the Office he executed, was *not* an *annual* one.

In Support of the former Part of their Objection, they relied on the Caſe of *The King* againſt *The Inhabitants of Widworthy, Trin.* 10 & 11 *G.* 2. (*ante*, pa. 109, No. 34.) † And in Support of the latter Part of their Objection, they relied on the expreſs and clear Words of the Statute of 9 & 10 *W.* 3. *c.* 11. which requires the Office to be *annual*; whereas this was for *Half* a Year only.

† See alſo *ante*. No. 140. *poſt*. No. 243. pa. 785. and *Dougl.* 609. S. P.

Mr. *Selwin*, Mr. J. *Morton* and Mr. *Nares*, now ſhewed Cauſe againſt quaſhing the Order of Seſſions, which diſcharged the Order of two Juſtices; and againſt affirming that of the two Juſtices.

They inſiſted that *Daniel Harriſon* gained a Settlement in *Cold Aſhton*, by *both* the Methods directed by the Statute 9 & 10 *W.* 3. *c.* 11; *viz.*

COLD ASHTON and WOODCHESTER.

viz. by reſiding upon a Tenement of his *own*; and alſo by executing this *public Office for one whole Year*; (for the two Halves amount, they ſaid, to a whole Year;) And which is an *Annual* Office *in its Nature*. In *H.* 9 *G.* 1. *B. R.* 1 *Strange* 544, between the Pariſhes of *Burleſcome* and *Sampford Peverell*; the Office of Tythingman was adjudged to be "an *annual Office within the Pa-* "*riſh*," within the Words and Meaning of the Act. And the electing him *twice* into the Office, ſhews their Approbation of him the ſtronger, as a *fit* and *proper* Perſon to execute ſuch an Office.

LORD MANSFIELD—By *this* Cuſtom, as here ſtated, it is *not* an annual Office, but an Office for *half* a Year only.

Whereupon, the Counſel for *Woodcheſter* proceeded as to the *other* Method directed by the Statute; And argued that, as to the *beneficial Intereſt* ariſing upon the Death of *William Eido*, *though* NO *Adminiſtration* was taken out, yet an EQUITABLE *Right* veſted in *Daniel H.* by the Statute of Diſtribution; And *that* is ſufficient, *without* Adminiſtration. The Truſt of a ſmall Part of a Cottage is enough to gain a Settlement. 1 *Strange* 97, Between *Murſley* and *Grandborough* Pariſhes. And in *H.* 1708, *Grice* v. *Grice*, in *Chancery*, it was determined by Lord *Cowper*, "That the *equitable* Right* "veſted by the Statute of Diſtribution." They accordingly entered upon it, and have enjoyed it ever ſince: Which will appear, on Computation, to be 29 Years and an Half. And 29 *Years Poſſeſſion* upon it, is ſufficient to gain a Settlement. And no Adminiſtration was in the preſent Caſe, granted to any one *elſe*; nor any Objection made to their Right. Therefore He had both the *equitable Right*, and the undiſputed *Poſſeſſion for ſo many Years*: And there was *no other* Perſon who had any legal Claim upon it. Which, ſurely, is enough: For it is both the equitable and alſo the legal Intereſt united.

* *V.* 3 *Peere Williams* 50. under Note D.

There are indeed two Caſes, that may be urged againſt us; *viz.* *Farringdon* v. *Widworthy* *, *Tr.* 1737, 10 & 11 *G.* 2. where a Poſſeſſion for five or ſix Years only, without taking Adminiſtration, was holden *not* to gain a Settlement: And *South Sydenham* v. *Lamerton*, *T.* 3 *G.* 1. in 1 *Strange* 57, which was a Reſidence for only two Years upon a Tenement that was the Mother in Law's; and no Adminiſtration taken out. But it appears by *Strange's Reports* that it went off upon another Point. And in *Lucas* 389, it appears expreſsly that the Court gave *no* Opinion upon the Queſtion about the Right to an Adminiſtration being ſuch an equitable Intereſt as would

* *V. ante*, pa. 109. No. 34.

would amount to a Settlement, *without actually taking out Letters of* Adminiſtration.

But ſuppoſe *Daniel* and *Mary Harriſon* to have at firſt *entered* WITHOUT a Title, yet after 20 Years Poſſeſſion, their Poſſeſſion *became lawful*. Now here appears to be ſuch a Poſſeſſion, of *twenty* Years: And they moreover remained *Nine* Years after that, *without* Interruption. Now, the Caſe in 1 *Strange* 608, Between the Pariſhes of *Aſhbrittle* and *Wyley*, and 8 *Mod.* 287, S. C. is a full Proof "that long Poſſeſſion (as thirty Years) will gain a *Title againſt* " *all the World*, *but* the Lord; and even againſt Him, unleſs upon " Ejectment. And in Ejectment, 20 Years Poſſeſſion will either " make or defend a Title."

The Pauper's Settlement is *derivative* under the Certificate; And therefore if gained in *Cold Aſhton*, muſt be AS *by a Certificate*-Perſon. There is no Doubt, but this would have gained a Settlement, if the *Title* had been COMPLETED *by Adminiſtration:* And the WANT *of Adminiſtration* will not, in *this* Caſe, prevent it.

Indeed, in the Caſe of *Farringdon* v. *Widworthy* where the Poſſeſſion was *only five or ſix Years*, it was determined " that no Settle- " ment could be gained, in *ſuch* a Caſe, without taking out Admi- " niſtration." However, perhaps, if it was *Res integra*, it would not now be ſo determined.

But certainly, that Principle if *admitted*, ought *not* to be EXTENDED. And the Authority of that Caſe ought not to interpoſe *here:* (1ſt,) Becauſe there the Poſſeſſion was only *five* or *ſix* Years, after the Death of the Pauper's Father. Here there was a Poſſeſſion of 29 Years. (2dly,) There the *Term was gone*, was *expired*, *before* the Removal of the Pauper; And the Adminiſtration was not taken out *till after the Expiration* of the Term, and after the making of the Order. *Here*, the Term and Intereſt, both *exiſt:* And the *Poſſeſſion ſubſiſted* at the Time of making the preſent Order of Removal.

The *Right* is ſo *veſted in the next of Kin*, that if ſuch *next of Kin is once in Poſſeſſion*; ſuch Poſſeſſion ſhall *not be deveſted*, *without another Adminiſtration* taken out by ſome other Perſon. Nor could even a *rightful* Adminiſtrator evict, AFTER *a quiet Poſſeſſion of* 29 *Years*. And now, ſhall an *Order of two Juſtices* effect what an *Action* of Ejectment would not be able to effect? Surely, not.

2d Point—Suppoſing a Settlement in *Daniel* the *Father* and *Mary* his Wife—The Queſtion will then be, Whether that ſhall *communicate* a Settlement to *William* the *Son* and his Family.

COLD ASHTON *and* WOODCHESTER.

Now this *derivative* Settlement may be conſidered as *without* Relation to the Certificate-Laws. Here, *William* the Son *continued with his Father, above* 20 *Years* after his Father and Mother came into Poſſeſſion of this Tenement. Therefore THIS was his *derivative* Settlement *at the* TIME *when he ſeparated* from his Father's Family, and became emancipated: *For his Father and Mother had* THEN a *complete* Title, *even* upon an Ejectment, from *their Length of Poſſeſſion.*

If the Son had married and thereby become emancipated, even in the Midſt of the Father's inchoate Title, and *before* it became completed by full 20 Years Poſſeſſion: Yet it ſhould have *Relation* to the Beginning of it, if it had afterwards become actually completed to full 20 Years by Elapſion of Time. But here, the *Son did not* become emancipated, *till* the Father's Title was *become* completed by a full 20 Years Poſſeſſion.

The un-emancipated Son's derivative Settlement *ſhifts* and *varies* WITH *the Father's, toties quoties*, ſo often as the Father's Settlement changes.

Mr. *Norton* and Mr. *Huſſey, contra*, for quaſhing the Order of Seſſions.

1ſt, They *denied* that the Law *veſted* ANY *Intereſt* in *Daniel Harriſon's* Wife *Mary*; whoſe Father, *William Fido*, had *Five* OTHER Children, *beſides* herſelf; as it is expreſsly ſtated: And they *denied* that ANY *Length of Poſſeſſion* will give a *Right*, though it may bar the particular Remedy of an Ejectment. Nor is the Length of Poſſeſſion any Sort of Argument, in the preſent Caſe: Becauſe the Poſſeſſors were never ſubject to Removal. No Certificate-Perſon can be removed, TILL *he actually becomes* chargeable. Now here, *Daniel Harriſon* NEVER *became actually chargeable* to the Pariſh of *Cold Aſhton*. Therefore they could NOT *remove* him, *wherever* he reſided. And conſequently, his *Length of Poſſeſſion* ought NOT *to affect them.*

As to the *Right veſting in the* NEXT *of Kin*, by the Statute,—IF We were to *admit* their Principle, it would *not help* them: For *Mary* the Wife of *Daniel*, was NOT *the next of Kin*; She having five other Perſons in *equal Degree* with Herſelf. And therefore She was NEVER *irremovable*; For She NEVER had a *Right*, either equitable or legal: Nor conſequently, any Perſons claiming under Her.

And as to the *Length* of Poſſeſſion, it ſhall not enure *to do wrong* to the certificated Pariſh, who (as has been obſerved) had no Power

to

* Cold Ashton and Woodchester.

to remove the Pauper, let his Reſidence be where it would, TILL *actually become* chargeable: Which this Man never was.

Neither have they at all proved, "that an EQUITABLE *Intereſt* "*will* gain a Settlement." But, however, here the certificated Perſon had *neither* an equitable *nor* a legal Intereſt; as five other Perſons were *equally* concerned, and the Certificate-Man had *no Adminiſtration*.

As to the Caſe of *Farringdon* and *Widworthy*—*Five* Years would have gained a Settlement as well as Fifty; if the reſt of the Facts had been ſufficient to ſupport it.

As to the TIME of the *Son's taking* the derivative Settlement *from the Father*, they agreed that it muſt be conſidered as reſpecting the Time *when he left* his Father's Family, and the Place of his Father's Settlement at *that* Time. And they ſaid that they ſhould have argued, (if the Father's executing the Office of Tythingman had in the Judgment and Opinion of the Court, been thought material,) "that, as he had only executed it for one *half* Year *at the* "*Time of the Son's parting from him*, it could *not* have gained a Set-"tlement to the Father himſelf, *at* THAT *Time*." But that Point is now out of the Queſtion; as the Court do not eſteem it an annual Office.

But admitting and agreeing that the Son's derivative Settlement from his Father can only relate to the *then* Settlement of the Father, which the Father was intitled to, *at the Time*; Yet here, the Father's Settlement was NOT *then* become even helped by the Poſſeſſion, in the Manner that they endeavour to repreſent. For it is *not expreſsly* ſtated "that he had then been 20 Years in Poſſeſſion of the Tene-"ment:" And the Court will not preſume the Words "ABOUT "*Eight* OR *nine* Years," to mean NINE *Years* ABSOLUTELY. And if not, the Father's Poſſeſſion does *not* appear to have been a Poſſeſſion of 20 Years complete, *at the Time when* the Son parted from him. So that the Foundation of their Argument from *that* Topic, fails them in Point of Fact.

LORD MANSFIELD—This Caſe ſeems to depend upon two Queſtions.

1ſt, Whether *Daniel Harriſon* the Father of *William* gained a Settlement, *Himſelf* in *Cold Aſhton*; to which Place he is agreed to have come originally, *as a Certificate-Man*.

2d, Whether *William* the Son of this *D. H.* gained a DERIVATIVE Settlement there, from his Father.

First

COLD ASHTON *and* WOODCHESTER.

First Queſtion—*Daniel* had been 29 ½ Years in Poſſeſſion at the Date of the Order. The Queſtion is Whether he is within 9 & 10 *W.* 3. *c.* 11. which mentions *only two* Methods, whereby certificated Perſons can gain Settlements in Pariſhes, to which they come with Certificates; *viz.* taking a Leaſe of a Tenement of 10*l. per Annum*, or executing an annual Office.

But an ESTATE *of a Man's* OWN, FROM *which he* CANNOT *be removed*, has been, *by Conſtruction*, (and a very *reaſonable* one too) holden to be WITHIN this Act: For it would be a very hard Thing, to remove a Man *from his* OWN *Eſtate*. And the Rule holds as well in the Caſe of a *Certificate-Perſon*, as in any *other* Caſe, "That no Man "ought to be removed from his *own* Property and Eſtate." The Principle of this Determination is, becauſe a Property of a Man's *own*, is a *ſtronger* Caſe than HIRING *another* Perſon's of 10*l. per Annum* Value.

The Queſtion then is, "Whether, here, *Daniel Harriſon* acquired *ſuch* a Right, *as rendered him* IR-*removable*." (For it does not turn, at all, upon his *becoming actually chargeable*, or not: The true Queſtion is, "Whether he became *ir-removable* or not."

Now here he had acquired a POSITIVE *Right*, by 20 Years Poſſeſſion: Which is much more than a mere *negative* Right or a *Bar*. This was ſuch a poſitive Right as would have ſufficed to *ſupport an Action*: He might have BROUGHT *an Ejectment upon a* 20 *Years* Poſſeſſion. Therefore it is diſtinguiſhable from the Caſe of a *Bar*, (a mere negative Right,) or a Limitation: For it does not merely bar the Remedy; but it *gives* a Right, upon which he may recover in an Ejectment.

And here is a *Preſumption* "That they had AGREED *with* the "other Children of *William Fido*, for their Shares." 'Tis like the Preſumption of a Bond's being ſatisfied; when no Intereſt has been paid for twenty Years.

As to *Mary Harriſon's* Right to this Settlement, as being *next of Kin* to *William Fido*, who died poſſeſſed of this Term——The *General* Queſtion "Whether it be ſufficient for the next of Kin, to be "in *Poſſeſſion* merely, WITHOUT *taking out Adminiſtration*," is very different from the particular Queſtion in this Caſe: And we have nothing to do with it, in the *preſent* Caſe: For there is great Difference between a SOLE next of Kin; and where SEVERAL Perſons in equal Degree have All of them an EQUAL Right; (Which is the preſent Caſe.)

On

On the *General* Queſtion, I ſhould have deſired to look into the Caſes; and to have well conſidered them. But that is not now neceſſary; becauſe I ground my preſent Opinion on the Caſe here ſtated to Us, upon what is PARTICULAR in this Caſe.

Second Queſtion.—As to the derivative Settlement of the Son, (the Huſband and Father of the preſent Paupers) from his Father *Daniel Harriſon*.

The Term *Emancipation* has been much made Uſe of. But "*Emancipation*," in the Caſe of Settlements of Poor Perſons is a vague Term; and not properly applicable to the Subject.

The Children of all Parents muſt have the Settlement of the Father, TILL they acquire another for themſelves. Here the Son is *not* ſtated to have *acquired* One of his *Own*: therefore he had ſuch as he derived from his Father. And his Father had gained one in *Cold Aſhton*. And there is no Ground, here, to ſay that the Son muſt *neceſſarily* be taken to have left his Family, BEFORE the Time that the Father acquired a full and complete Settlement in *Cold Aſhton*, for *himſelf*.

Therefore I think the Seſſions-Order, which fixes the Paupers upon *Cold Aſhton*, ought to be confirmed.

Mr. Juſtice DENISON kept to the ſame Points, and agreed in the ſame Opinion.

1ſt Point——The Father, *Daniel Harriſon*, was in Poſſeſſion of an *Eſtate of his* OWN, for *above* 20 *Years*: And he was NOT *removeable* from it, on Account of his *Property* in it, which rendered him *irremovable*. It is not material HOW *he came into Poſſeſſion*: For 20 Years Poſſeſſion will, *alone*, give him a Settlement. Twenty Years Poſſeſſion is ſufficient either to defend, or even to make a Title in Ejectment. The Caſe of *Aſhbrittle* v. *Wiley*, 1 *Strange* 609, is ſo, expreſsly.

And it does *not* turn upon his not being removable *till actually* chargeable: It turns upon his being *ir*-removable *from his* OWN. And a *Certificated* Perſon may gain a Settlement *by* TITLE, as well as an *Uncertificated* Perſon may.

Second Point——As to the *derivative* Settlement of *William Harriſon*, the Son of *Daniel*, There can be no Doubt but that if *Daniel* gained a Settlement by ſuch Title, his Son will do ſo too: For the Children derive their Settlement from the Father. And We muſt not be ſcanning Days and Hours, upon this Order, to endeavour to make out that *perhaps* the 20 Years Poſſeſſion of the Father was not become *abſolutely completed*, at the Time when his Son left him. It appears

COLD ASHTON *and* WOOD-CHESTER.

appears probable that it was: And it does not at all appear that it was not.

Therefore I am of the ſame Opinion with my Ld. Chief Juſtice, "That the Order of Seſſions ought to be affirmed."

Mr. Juſtice WILMOT concurred: And expreſſed himſelf to the following Effect.

1ſt, I do not think it material to ſay any Thing about the *Taking out* or *not taking* out Adminiſtration. If that Point upon the *General* Queſtion is ſettled, I ſhall not be at all inclined to overturn or contradict it; *eſpecially* in the Caſe of the *Poor's Settlements*, which it is always beſt to aſcertain and reduce to *Preciſion*: And it is proper *ſtare deciſis*, in Caſes of this Nature.

It is objected that *Daniel Harriſon* had no *legal* Poſſeſſion. But this Poſſeſſion is either by Right, or by Wrong: And it was a Poſſeſſion of 20 Years. If it was by *Right*, the Objection is at an End. And a 20 Years Enjoyment and Continuance, *even* upon a Poſſeſſion by *Wrong*, gives a *legal* Title upon an Ejectment, *even againſt* the *rightful* Owner. And after ſuch a Length of Poſſeſſion, One would be inclined to *preſume* as much as is poſſible. Now here it is poſſible that *Daniel Harriſon* and his Wife *might* have ſome Grant or Aſſignment from *William Fido* in his Life time; or ſome other *regular* and *rightful* Title to the Poſſeſſion which they took of this Tenement: So that their Poſſeſſion *might* poſſibly have been a *rightful One*.

2d Point——The Word "*Emancipation*" is improperly applied to Caſes of this Kind, and has been uſed in a vague Senſe upon theſe Occaſions. It is a Term taken from another Law; and in that Law has a determined Meaning: But here it has been miſapplied.

It has been argued "That if the Son left his Father's Family "*before* the Father had been in Poſſeſſion for *full* 20 Years, he "could not derive a Settlement from his Father gained by a 20 "Years Poſſeſſion." But we are not to ſtand upon a Nicety of Computation, in order to endeavour to make out, that under the general Expreſſion of the Son's "living with his Father and Mo-"ther, in the Tenement till *about* 8 or 9 Years ago," he might poſſibly have left his Father's Family *before* the Father had been *quite* 20 Years in Poſſeſſion—We have no Reaſon to *preſume this*: And here may, on the contrary, be a Preſumption or Poſſibility at leaſt, of the Father's coming *legally* into the Poſſeſſion; *viz.* by Aſſign-

ment from *William Fido*, before his Death, or by ſome other legal Method.

COLD ASHTON *and* WOODCHESTER.

Per Cur. unanimouſly, (Mr. Juſtice FOSTER only being abſent)

Order of Seſſions AFFIRMED: *Original Order* QUASHED.

* *V. ante*, No. 72, 75, *Poſt.* No. 149, 244. and *Douglas*, 738. as to the Means of *diſcharging* a Certificate by ESTATE.

Rex *v.* Inhabitants of Mayfield. No. 144.

The ſame *Monday* 13th *Feb.* 1758.

In a Caſe appearing to be *doubtful* on the Face of an *Order* of Seſſions, the Court will *intend* them to have done *right*.

MR. *Aſton* and Mr. *Burrel* ſhewed Cauſe againſt quaſhing an Order of Seſſions.

Two Juſtices had removed *Robert Furner* and *Mary* HIS WIFE, from *Mayfield* to *Horſtedcaines*, (both, in *Suſſex:*) And the Seſſions, upon an Appeal, diſcharged their Order.

Which Order of Seſſions Mr. *Ruſſel* and Mr. *Norton* had moved to quaſh.

The Order of Seſſions ſtates no Caſe at all. It is expreſſed only thus—— "Upon the Appeal of *&c*, from an Order *&c*, for remov- "ing of *Robert Furner* and *Mary* HIS WIFE, from *&c*, to *&c*; "And upon hearing of Counſel on both Sides; It is ordered by this "Court, That the ſaid Order or Warrant of the ſaid two Juſtices "of the Peace be diſcharged, AS TO *the* SAID MARY: And, by "this Court, it is diſcharged accordingly."

The Counſel who moved to quaſh this Order of Seſſions Objected "That this *amounts to a* DIVORCE of the Huſband and "Wife."

NOTE—The Fact was, That it appeared to the Seſſions, that She had a *former Huſband:* Who did not appear to them to be dead. (And Lord *Manſfield*, upon the Original Motion, ſuſpected "that the Seſſions might think Her *not to* "*be* his Wife.")

The Counſel who ſhewed Cauſe againſt quaſhing the Order of Seſſions obſerved, That *even if ſhe was* really his Wife, yet ſhe *might* have hired herſelf to a Service, when Sole; And if ſo, her Marriage would not diſſolve the Contract. However they propoſed that it

MAYFIELD *and* HORSTED-CAINES.

ſhould go back to be *more fully ſtated*: Which the other Side were ready to conſent to. But

* *Mr Juſtice* DENISON did not think it neceſſary: For the Seſſions had *not called* her his Wife; nor can We take it for granted, "that She was ſo." And We muſt *intend* them to have done *right*. They *only recite* the Order of *two Juſtices*, which indeed calls her, "*his ſaid Wife*:" But when the Court of Seſſions come to uſe their *own* Words, they call her, "the SAID MARY." So that upon the Face of their Order, they plainly took Her NOT *to be* his Wife. And I do not know that the Juſtices are *obliged* to ſtate the Caſe *ſpecially*.†

† *Vide ante*, No. 19. pa. 64. *that they are not.*

Mr. Juſtice WILMOT concurred; and declared that it was extremely plain to Him, that the Juſtices at Seſſions did *not* take her to be his Wife: For though they *recite the Original* Order which removes Her *as the Man's Wife*, they drop the Word "*Wife*," and only call her "*the ſaid Mary*," in their *own* Order of (Seſſions,) And, as they had Juriſdiction, We ought to *intend* that they did *right*.

RULE DISCHARGED: And

The ORDER *of* SESSIONS AFFIRMED.

* Lord *Mansfield* was now abſent; and alſo Mr. Juſtice *Foſter*.

Eaſter

Eaſter Term

31 Geo. 2. 1758.

Rex *v.* Inhabitants of Bank-Newton.

No. 145.

Thurſday 13th *April* 1758.

Conditional Hiring of a *married* Man, whoſe Wife died before the *Hiring* was *completed*, and *Service* under it for a Year, will gain a Settlement.

MR. *Aſton* ſhewed Cauſe againſt quaſhing the two following Orders.

Two Juſtices removed *George Ayrton*, *Ellen* his Wife, *Anne*, *Elizabeth*, *Iſabel*, *Jane*, and *George* their Children from the Pariſh of *Marton* in the Weſt-Riding of *Yorkſhire*, to *Bank-Newton* in the ſaid Riding: And the Seſſions, upon an Appeal, confirm their Order.

The State of the Caſe was this——*George Ayrton*, the Pauper, *and* HIS WIFE, being legally ſettled at *Bank-Newton*, on the 16th of *February* 1738, *John Wilcok*, a Son of *Henry Wilcock* of *Marton*, by Order of his Father, on the *ſaid 16th of February* 1738, *agreed* on the Behalf of his ſaid Father, with the ſaid *George Ayrton* the Pauper, *who was* THEN *a* MARRIED *Man*, to ſerve the ſaid *Henry Wilcock* his Father, for a Year, from the 24th of the ſame Month of *February* (when his Father's then Servant was to go away,) at five Guineas Wages; *in caſe* the ſaid *Henry Wilcock* ſhould approve the ſaid Terms.

That *afterwards*, the WIFE of the ſaid *George Ayrton* DIED, on the 18th of the ſame Month of *February*, WITHOUT *Iſſue*. And *on the* 24th of the ſame Month of *February*, the ſaid *George Ayrton*, THEN *having* NEITHER WIFE *nor Child*, went to the ſaid *Henry Wilcock* the Father, who then lived in *Marton* aforeſaid. And the ſaid *H. W.* then aſked him the ſaid *G. A.* "*Upon* WHAT *Terms and* "*Conditions*, he the ſaid *G. A.* and his Son *John Wilcock* had agreed:" And the ſaid *G. A.* then told the ſaid *H. W.* "That the Terms "agreed upon between him the ſaid *G. A.* and the ſaid *J. W.* were, "that He the ſaid *G. A.* ſhould ſerve the ſaid *H. W.* for a Year, "from the 24th Day of the ſame Month of *February*, for 5*l.* 5*s.* 0*d.*

BANK-NEWTON *and* MARTON.

"Wages, *in Case* He the ſaid *H.W.* ſhould *approve* the ſaid Terms." And thereupon the ſaid *H. W.* ſaid "That *he* DID *agree* to the ſame "Terms." And accordingly, the Pauper *G. A.* did, on the ſaid 24th of *February* 1738, THEN *having neither* WIFE *nor* CHILD, enter into the Service of the ſaid *H. W.* and *did ſerve* the ſaid *H. W.* in *Marton* aforeſaid *for One whole Year* from the ſaid 24th Day of *February* 1738; and received 5*l.* 5*s.* 0*d.* of the ſaid *H. W.* for a Year's Wages.

The Seſſions were of Opinion, "That the Pauper ſerved the ſaid "Year, *under* the ſaid CONTRACT *made with* the ſaid JOHN *Wilcock*, "as aforeſaid; And that at the *Time* of the SAID *Contract and* "*Hiring*, He was NOT *an* UNMARRIED *Perſon* WITHOUT *a Wife*; "and that *therefore* He *did* NOT, by *ſuch* Hiring and Service, gain "a Settlement in *Marton*:" And therefore they confirm the ſaid Order of Removal.

Mr. *Norton* having moved, on *Wedneſday* the 8th of *February* 1758, to quaſh both the original Order and the Order of Seſſions——

Mr. *Aſton* now ſhewed Cauſe why theſe Orders ſhould not be quaſhed.

By 3 & 4 *W. & M. c.* 11. *ſect.* 7. He muſt be *unmarried at the Time* of the *Hiring*. The Words are, "That if any *unmarried* "Perſon, not having Child or Children, ſhall be *lawfully hired* into "any Pariſh or Town for one Year, ſuch Service ſhall be adjudged "and deemed a good Settlement therein; though no ſuch Notice in "Writing be delivered and publiſhed, as is therein before required." Here, the Hiring, He ſaid, was on the 16th and the Wife did not die till the 18th. So that he was NOT *an unmarried Perſon, when he* was hired.

The Agreement might perhaps be made with a married Perſon on purpoſe, *by Way of Caution*, to prevent a Charge upon the Pariſh. And in 10 *Mod.* 393, *Ranton* v. *Horton* Pariſh—*per Pratt* Ch. Juſt. The Intent of ſuch a Caution is lawful. [See *Lucas* 393.]

To prove that the *Time of the Contract*, muſt be referred to the *Inception* of it——He cited *Bro. Contract, pl.* 15. The *Retainer* is the *proper Inchoation* of the Service. So is *Bro. Laborers, pl.* 9 & 11.

Mr. *Norton, contra*—for quaſhing the Orders——

The Intent of the Reſtriction of this Law to unmarried Perſons without Children, was to prevent the conſequential Damage that might

BANK-NEWTON *and* MARTON.

might accrue to Pariſhes from hiring Servants incumbered with Wives or with unſettled Children. But this Man is within both the *Words* and *Meaning* of the Qualifications admitted by the Act. He could bring no conſequential Charge upon the Pariſh.

If a Perſon hired unmarried, ſhall marry * during the Service, Yet He ſhall gain a Settlement, both to himſelf and his Wife. So if a Female Servant happening to be then with Child, he hired; She and her Child ſhall both gain a Settlement, if She ſerves out her Year.

* *V.* 2 *Salk.* 529. and *Seſſions Caſes*, Edition 1750, Vol. 1. *Elſey Lovat*, v. *Clint*

It is enough, that *when he begun* his Service, there was no Danger of a conſequential Charge to the Pariſh. And this is all that the Court have their Eye upon.

And *though* this ſhould, *as between the Parties*, be a Contract between *them*, from the 16th; Yet that will not affect the *Pariſh*. But, however, the Contract was *not complete*, but a meer Nullity TILL *the Aſſent* of the Principal, (the Father:) For he had it in his Power to *diſapprove*. It was *not binding*, till his Aſſent was given: For the Agent only acted under a limited Authority. And *when* the Principal did aſſent, the Servant was *unmarried*.

As to *Bro. Contract*, 15. It certainly was binding upon both the Parties, *when J. N.* ſet the Price: But had not been ſo *if J. N.* had *refuſed* to ſet a Price. So *Bro. Laborers*, *pl.* 9 & *pl.* 11. But ſtill this affects only the contracting Parties; and *not* the *Pariſh*.

LORD MANSFIELD ſtopt Mr. *Norton* from proceeding; It being clear that the HIRING *was on the* 24*th*. For the Father *might have diſſented* from the conditional Agreement made by his Son on the 16th. But the Man was *unmarried* on the 24th when the Father made the COMPLETE *Agreement* with him.

And the THREE other JUDGES declaring themſelves moſt clearly to be of the ſame Opinion.—

BOTH ORDERS *were* QUASHED.

Rex

No. 146. Rex *v.* Inhabitants of Macclesfield.

Saturday 22d *April* 1758.

A *ſpecial* Hiring, for three Years, to work *only certain Hours*; and to be at Liberty all the *Reſt* of the Time,—will not gain a Settlement.

MR. *Yates* ſhewed Cauſe againſt quaſhing an Order of Seſſions, and affirming the original Order.

Two Juſtices removed *Joſeph Bower*, an Infant of eleven Years of Age, from *Macclesfield* to *Sutton* (both in *Cheſhire*.) But the Seſſions, upon an Appeal from this Order, diſcharged it.

The ſpecial Caſe ſtated was this—The ſaid Pauper *Joſeph Bower* was a Baſtard Child, *born in Sutton*, and maintained by the Overſeers of *Sutton*.

When he was about the Age of eight Years, he was, *without* the Knowledge or Conſent of the Overſeers of *Sutton*, HIRED to one *John Swain* of *Macclesfield*, to work in his Silk-Mill there, for the Term of three Years; at 6*d.* a Week for the firſt Year; 9*d.* a Week for the ſecond Year; and 13*d.* a Week, for the third Year; And the ſaid Contract was made (as well *with* the Conſent and Direction of the *Mother* of the ſaid Pauper, as with his own free Will,) *by a Perſon* whom the Mother employed for that Purpoſe; ſhe not being able to ſtir about, herſelf, or to do any Thing towards maintaining the ſaid Pauper. The Maſter, *John Swain*, was NOT *to find* the ſaid Pauper either Diet *or Lodging*; And the ſaid Service was to be *only* ELEVEN *Hours* in the ſix working-days; and *all the Reſt* of the Time, as well as on *Sundays*, the ſaid Pauper was AT HIS OWN *Liberty* and *his* OWN MASTER.

The Pauper *continued three Years* in the ſaid Service; but within that Time, *frequently* ABSENTED *himſelf from his Work*; ſometimes for *a whole Day or longer*; and at other Times, for *ſeveral Hours* in the Day; for all which Defaults, *Deductions* were made out of his Wages, in Proportion to the Time loſt: But there was never any new or other Agreement made, ſave as aforeſaid.

That during the ſaid *whole three Years*, the ſaid Pauper LODGED with his *Mother* in *Macclesfield*; Who *received his Wages:* And the *ſame* NOT *being ſufficient to maintain* him, and the Mother being unable to work, the OVERSEERS OF SUTTON CONTRIBUTED 6*d. a Week, during the whole Time*, TOWARDS *his Maintenance.*

That about, or ſoon after the Expiration of the ſaid three Years, the Mother died: And the ſaid Pauper (being ill) required Relief from the Overſeers of the Poor of *Macclesfield*; Who, thereupon,

applied for the Order to remove him from their Townſhip of *Macclesfield* to that of *Sutton*.

MACCLESFIELD *and* SUTTON.

The Seſſions declared their Opinion, "That this Settlement is "in the ſaid Borough and Townſhip of *Macclesfield*:" And therefore they *repeal and make void* the ſaid Original Order; and give 15*s*. 6*d*. Coſts to the Overſeers of *Sutton*.

The Rule to ſhew Cauſe why this Order of Seſſions ſhould not be quaſhed, was made ſo long before, as in *Hilary* Term 30 *G*. 2. and had been enlarged for four Terms ſucceſſively.

CAUSE *was now ſhewn*.

Mr. *Norton*, who was for quaſhing this Order of Seſſions, argued that the Settlement was in *Sutton*, and NOT *in Macclesfield*: For that the Facts ſtated could *not* be conſtrued to amount to a *Hiring for a Year and Serving for a Year*, within the Meaning or Intention of the Act of Parliament.

Mr. *Yates*, *contra*, argued that it *was*. See the Statutes of 3 & 4 *W*. & *M*. *c*. 11. *ſect*. 7; And 8 & 9 *W*. 3. *c*. 30. *ſect*. 4: Which give a Settlement by being hired and ſerving for a Year.

He cited the Caſe of *Rex* v. *White Chapel*, *P*. 11 *G*. 1. 1725; and *Rex* v. *Inhabitants of King's Norton* *, *B*. *R*. *P*. & *Tr*. 1740; and *Rex* v. *Inhabitants of Wrinton alias Wrington* †, *M*. 22 *G*. 2. *B*. *R*.

* *V*. *ante*, pa. 152, No. 52.
† *V*. *ante*, pa. 280. No. 98.

THE COURT held clearly with Mr. *Norton*.

Lord MANSFIELD premiſed that there was *no Foundation*, on this State of the Caſe, to imagine that it could be a Settlement upon the Ground of an *Apprenticeſhip*: The *only* Queſtion is "Whether theſe Facts ſtated, amount to a Settlement in *Maccleſ-* "*field*, as *a Hiring for a Year and Service for a Year*."

The Pauper was an *Infant of* ONLY *Eight Years of* Age, at the Time of the Hiring: Therefore *he was* NOT *bound* by the Agreement. Indeed he *might* have affirmed it; (For the Contract of an Infant is *not abſolutely* void, but only *voidable*, at his ‖ *own* Election;) But the Maſter could NOT *oblige* him to ſtand to it.

[‖ This Doctrine was ſettled and eſtabliſhed in the Caſe of *Holt* v. *Ward*, *B*. *R*. *Mich*. 1732., 6 *G*. 2.]

Then as to the *Contract itſelf*—It was only "To ſerve 11 *Hours* "in the Day, of the ſix Working-days: But *during* ALL *the Reſt* "of thoſe Days, and the WHOLE *Sunday*, the Servant was to be at "his OWN LIBERTY and his OWN MASTER." It is in the Nature of a Contract *from Week to Week*; And it cannot, in this Caſe, be conſtrued

Macclesfield and Sutton.

conſtrued to gain a Settlement, unleſs it had been *intended* that it ſhould: Whereas it is plain that the Pariſh of *Sutton* have not underſtood it in that Light, as a Contract to *change* the Child's Settlement; becauſe they have *contributed towards* it's Maintenance during the *whole* 31 Years.

Upon the whole, therefore, this Pauper's Settlement is clearly in *Sutton*.

Mr. Juſtice Foster concurred. He ſaid He could not diſtinguiſh this Caſe from that of *Chew-Stoke* *.

* *M.* 1748, 22 *G.* 2. Cited before, by Mr. *Yates*, by the Name of *Rex* v. *Inhabitants of Wrinton alias Wrington.*

A Service ſufficient to gain a Settlement, muſt be ſuch a State, *during the* whole *Time*. Whereas this was not *a Servitude during* all *the Time:* For he was to be at his *own Liberty* and his *own Maſter* during the greateſt Part of *every Day*, and *every* whole *Sunday*. Conſequently, this Perſon was not *at all in a State of Servitude at* thoſe excepted Times. And therefore this is not *ſuch* a Service as is intended by the Act.

Mr. Juſtice Wilmot alſo concurred. The Servant's *Lodging* in his Mother's Houſe, would have made no Difference, he ſaid; Provided the Hiring and Service had been in all *other* Reſpects good.

But here, the Infant was not *bound*. For an Infant has Power, *either* to avoid, or to confirm his Contract: And ſo it was determined in the Caſe of *Holt* v. *Ward*, *Trin.* 1732, *B. R.*

Then, As to the *Contract* itſelf——This is *not ſuch* a Hiring and Service as will gain a Settlement within the Act of 3 & 4 *W.* & *M. c.* 11. *ſect.* 7. For that Act intends only ſuch Services, where the Servant is *under the Command and Control* of the Maſter, *during the* whole *Year:* Which this Servant was *not* to be; but ſeems only to have been hired for the *particular* Purpoſe of working in theſe Silk-Mills, at *certain Hours*. He was *not* in a *continued* and *abiding* State of *Servitude*, during the *whole* Year: And therefore He did *not* gain a Settlement in the Borough and Townſhip of *Macclesfield*. Conſequently, the Seſſions have determined wrong.

Per Cur. unanimouſly †—

Order of Seſſion quaſhed: *Original* Order affirmed.

† Mr. Juſtice *Deniſon* was abſent.

Vide ante, No. 98. *Poſt.* No. 209. 218. And *note the Diverſity* in thoſe Caſes, which turns upon the *Exception* being, or not being, *Part of the original Contract.*

Rex

Rex v. Inhabitants of Caverſwall. No. 147.

Monday 1ſt *May* 1758.

A Settlement cannot be gained by *Hiring* and *Service*, where the Contract is *diſſolved*, and Service *determined*, though by *Conſent*, before the End of the Year.

MR. *Morton* ſhewed Cauſe againſt quaſhing the following Orders.

Two Juſtices removed *Samuel Braſſington*, *Mary* his Wife, and their five Children, (naming them, and ſpecifying their Ages) from *Trentham* to *Caverſwall* (both in *Staffordſhire:*) And their Order was confirmed by the Seſſions.

The Special Caſe ſtated was this—*Samuel Braſſington*, the Pauper, was hired for a Year, and ſerved a Year in *Caverſwall*. And afterwards was *hired for a Year*, to *Edward Braſſington* of *Trentham*, at five Pounds Wages; and SERVED *him* TILL *within* THREE WEEKS *of the* END *of the Year:* When, on ſome Diſputes ariſing betwixt him and his Maſter, He was, *with his own Conſent*, DISCHARGED from his Service; and *received* All his *Wages* EXCEPT what was *deducted* FOR *the three Weeks*.

As ſoon as he left this his Service, He went to *London*; and was *abſent about a Fortnight*.

Upon his Return, at MRS. *Braſſington's* Requeſt, (his Maſter being then from Home,) *he* WENT AGAIN *into their Service*: and *within a Week* after the Expiration of the firſt Year, his ſaid Maſter *hired him* AGAIN *for* ANOTHER *Year*; And He ſerved Him, *in Trentham*, for *about* SIX *Months of that* SECOND *Year*, and then left him.

The SESSIONS, being of Opinion "That, as the Pauper had ABSOLUTELY QUITTED his Service, before the firſt Year was expired, the ſubſequent Service, under the ſecond Hiring, *though with the ſame Maſter*, could NOT *be taken in Aid*, ſo as to make up a Year's Service, and give a Settlement, within the Meaning and Intention of the Statute of 8 & 9 *W.* 3." confirmed the Order of Removal *from Trentham* to *Caverſwall*.

This COURT was moved by Mr. *Gilbert* (on 10th *February* laſt) for a Rule to ſhew Cauſe "Why theſe Orders ſhould not be quaſhed:" Becauſe here was, as he ſaid, an undoubted *regular* HIRING for a Year: And the *whole* of the SERVICE, *taken together*, was for *more* than a Year. And he cited 2 *Strange* 878, *Inter Par.* of *Hanmer* v. *Elleſmere:* Where it was adjudged "that the Service needs not be in the ſame identical Year." 2 *Raym.* 1511, *Rex* v. *Inhabitants of Aynhoe*, S. P. accord. *Rex* v. *Inhabitants of Fiſehead Magdalen* *,

CAVERSWALL and TRENTHAM.

*Magdalen**, *M.* 1737, 11 *G.* 2. *B. R:* Where the Servant *left* his Master's Service, (leaving a Shirt at his Master's House;) then went to his Father's House (in the same Parish) before any Discourse about a new Contract: But in about one Hour met his Master, and made a new Agreement for a Year. This was adjudged to be a *Continuance* of the former Service.

* *V. ante*, pa. 116, No. 73.

Mr. *Morton* and Mr. *Ashurst*, the Counsel for the Orders upon shewing Cause now, insisted that the Sessions had determined *right*: For that the former Service, under the first Hiring, was at a TOTAL END. They stated the Acts of 3 & 4 *W.* & *M. c.* 11. and 8 & 9 *W.* 3. *c.* 30. The Case indeed of *Rex* v. *Inhabitants of Aynhoe*, 2 Ld. *Raym*, 1511; And the Case of † *Brightwell* and *West-hanning*, upon which that Resolution was grounded, (though otherwise not in itself agreeable to Lord *Raymond*'s own Opinion,) they allowed, are Authorities not to be shaken *now*; "that a Hiring for a Year, and a Service "for a Year, *though* not under the *same* Hiring nor within the *same* "Year, shall be construed to gain a Settlement." But then that must be an uninterrupted Continuance in the same Service. And accordingly that was the Case of a *continued uninterrupted* Service: But here, the *Contract* was *absolutely determined* and *dissolved*. *Tr.* 1745, 18 & 19 *G.* 2. *B. R. Rex* v. *Inhabitants of Goodnestone* ‖, is rather an Authority that this present Settlement is bad: For there the Court considered the Man, as being *all the Time* IN *the Service* of his Master, (though he was, with his Master's Leave, gone to Sea upon the Herring-Fishery.)

† *Hil.* 1 *G.* 1. *B. R.* See *Lucas* 287. S.C.

‖ *V.* 2 *Strange* 1232. S. C. (though misintitled;) And *V. ante*. pa. 251, No. 85.

They also insisted that this could not possibly be esteemed a CONTINUANCE *in the* SAME *Service*, under the Act of Parliament: Which the Case of *Fifehead*, *Tr.* 9 *G.* 2 ‡. *B. R.* might very well be construed to be.

‡ *Qu.* if not *Fifehead Magdalen*, above cited, *M.* 11 *G.* 2.

Mr. *Norton* and Mr. *Gilbert*, the Counsel on the other Side—, for quashing the Orders, cited the same Case of *Goodnestone*, (*v. supra*,) as a liberal Construction in *Favour* of Settlements. Where the Servant had Leave to go and did go to the Herring-Fishery, three Weeks before the End of his Year; yet the Settlement was holden good.

The Gaining Settlements has been always favoured: And Natural Birth-right and Justice demand that the Right of the Subject should not be narrowed. And in those Cases where *subsequent* Hirings and Services have been *taken in Aid*, yet there has been a *total End of* the *first* Contract, as well as there can be said to be in the present Case.

However,

However, it is *not neceſſary* that the Contract ſhould continue uninterrupted during the WHOLE Time. CAVERS. WALL *and* TRENTHAM.

The Court have allowed them to be acquired under different *Contracts*, under *different Services*, in *different Pariſhes*. And a *temporary Interruption* or even Diſſolution of the Contract will not vary the Caſe: For in many of the adjudged Caſes, the *firſt Contract was even totally diſſolved*, as much as it can be pretended to be in the preſent Caſe.

This Man was of CREDIT *enough*, to be hired for a Year: And that is the *proper Teſt*, of his being a Perſon likely or not likely to be chargeable. Nay, he is even of Credit enough to be hired for a *Second* Year, after his firſt was expired: Which makes it ſtill ſtronger.

And this SERVICE alſo is in itſelf ſufficient to gain him a Settlement. The Wife received him again *&c.* And the Wife's Act is the Act of the Huſband; and beſides, is ratified by him. And it appears that the Servant * *returned* to his Service, within the *firſt* Year.

* Note. The Words of the Order are "*Went* AGAIN *into* their Service."

To the Caſes cited in Support of the Orders——

It was replied——that in the Fiſhery-Caſe, *Rex* v. *Inhabitants of Goodneſtone*——the Man *hired a Deputy* to ſerve for him: And *that* was adjudged to be a *Continuance* in his Maſter's Service. Whereas here, his Service was *abſolutely at an End*. And the Words of the Act are "That he ſhall CONTINUE *and* ABIDE in the SAME *Ser-* "*vice* during the Space of one whole Year." [*V.* 8 & 9 *W.* 3. *c.* 30. *ſect.* 4.] Reply.

LORD MANSFIELD ſaid the Determinations upon theſe Poor Laws ought to be according to plain common Senſe, and with the leaſt Subtelty poſſible.

A *Hiring for a Year* was neceſſary by the * former Act: A SERVICE *or a Year* was added, by the † latter.

* 3 & 4 *W.* & *M. c.* 11. *ſect.* 7.
† 8 & 9 *W.* 3. *c.* 30. *ſect.* 4.

And where the Maſter gives *Leave*, it is a *Continuance* in the *ſame* Service: As in that Caſe of the Herring-Fiſhery, where a Man with his Maſter's Conſent, hired one to ſerve for him. (*V.* 2 *Str.* 1232.) So where there has been both a Hiring for a Year, and a Service for a Year, (though the original Hiring was for leſs than a Year,) and the Service *continues*; it has not been required that the Hiring for the whole Year ſhould be ſtrictly reckoned from the firſt Moment of the Service: But it ſhall be conſidered as ſufficient, that there were *both a Hiring for a Year* and a *Service for a Year*.

CAVERSWALL. *and* TRENTHAM.

In the Case of *Fifehead*, the Service was, in my Apprehension, (and so Ld. Ch. Just. *Lee* and the rest of the Court also took it,) a *continued* Service.

But here was a CHASM *of a Fortnight or three Weeks.* And the first Contract was ABSOLUTELY *dissolved*; and *so* CONTINUED *for a Fortnight or three Weeks.* Therefore this last Service can NOT *be connected* with the former Part of the Year. For if a *Chasm of a Fortnight or three Weeks* be not a *Discontinuance* of the Service, it will be hard to say what *is*.

Therefore I hold that here was no Settlement gained in *Trentham*.

Mr. Justice DENISON—The true Reason of the liberal Constructions of Services for a Year has been *because* the same Service CONTINUED: Whereas this Case is the very REVERSE; it being EXPRESSLY *stated* "That he was DISCHARGED." So that We *cannot help taking it* to be TOTALLY *dissolved*.

Indeed in the Case of *Aynboe*, and in that of *Brightwell* and *Westhanning*, the Court (though indeed they were upon a Construction somewhat strained too) determined them upon the Foot of the Service *continuing*: Whereas *this Service was* TOTALLY *at an End*.

Therefore He concurred.

Mr. Justice FOSTER—The Case of *Fifehead* confirms the Principle that the Court now go upon. There they did not consider so *small an Interruption* as *One Hour* or thereabouts, as an entire Dissolution of the Contract. But here it is a TOTAL *Dissolution*, and the two Services *can* NOT *be connected*.

Therefore he concurred; and upon the same *Principle*, "That it "ought to be a *continued uninterrupted* Service."

Mr. Justice WILMOT concurred.

The Cases of Hiring for *less than a whole Year*, and Service (under *such* Hiring) for *Part* of a Year; and then a second Hiring for a *whole* Year, and Service for Part of it, is indeed within the WORDS of the Act; where the WHOLE *Service together* amounts to *One whole* Year. But here is *both a Dissolution of the Contract*, and *also* an *End of the Service*; Both, within the First Year. Whereas in the Cases cited, the *Service* CONTINUED. The Case of *Fifehead* was only, as Lord Ch. Just. *Lee* expressed it, a *Hesitation* of the Boy for an *Hour*. Therefore it is plain that *if* Lord Ch. Just. *Lee had* considered it AS a *Dissolution* of the Contract and an *End* of the Service, He would have held the Settlement to be bad.

And

And it is much the beſt Way to determine theſe Caſes upon the Poor Laws, according to plain and common Senſe. For if once We go upon *Niceties* of Conſtruction, we ſhall not know where to ſtop: For one Nicety is made a Foundation for another, and that other for a Third; and ſo on, without End. CAVERSWALL and TARNTHAM.

Therefore He concurred entirely with the Reſt of the Court; and upon the ſame * Principle, "That it ought to be an *uninterrupted* CONTINUANCE of the *ſame* Service;" or elſe, that the ſecond Service could never be connected with the former.

Per Cur. unanimouſly——

BOTH ORDERS AFFIRMED.

* This Principle was alſo fully ſettled and eſtabliſhed, in *Rex* v. *Inhabitants of Croſcombe*, *M.* 1745, 19 *G.* 2. *B. R.* pa. 256, No. 87. See alſo, *ante*, No. 20. *poſt*. No. 215. S. P.

Trinity Term

31 Geo. 2. 1758.

Rex *v.* Inhabitants of Painſwick.

No. 148.

Wedneſday 7th *June* 1758.

A Tenant may gain a Settlement by being *charged, diſjunctively*, with his Landlord, and *paying* the Land-Tax, Poors Rates, *&c.*

MR. *Morton* ſhewed Cauſe againſt quaſhing the two following Orders.

Two Juſtices removed *Iſaac Moorman*, *Heſter* his Wife, and *William*, *Thomas*, *Heſter*, *Ann*, and *Iſaac*, their Children, from *Cirenceſter* to *Painſwick*, both in the County of *Glouceſter*: And the Seſſions confirmed their Order.

The ſpecial Caſe, ſtated upon the Order of Seſſions, was That on the 13th of *September* 1737, the Pauper *Iſaac Moorman* was bound Apprentice,

PAINSWICK and CIRENCESTER.

Apprentice, by Indenture, to one *Henry Phips* of *Painſwick*, Taylor, for ſeven Years; and lived with him, as his Apprentice, under the ſaid Indenture, in the ſaid Pariſh of *Painſwick*, for three Years and upwards: And then, the ſaid *Phips* failing, the ſaid *Iſaac Moorman* left him, and never returned to him again. That in the Year 1753, the ſaid *Iſaac Moorman* took a *Houſe* lying in the ſaid Pariſh of *Cirenceſter*, of one *Thomas Clifford*, for a Year, at the yearly Rent of 32 *s.* and 6 *d.* and *agreed to pay the Land-Tax and Poors Taxes, and all other Taxes* for the ſaid Houſe, for the ſaid Year.

That the Poors Rates of the ſaid Pariſh of *Cirenceſter* being produced in Court at the ſaid Trial of the ſaid Appeal, it appeared, from them, to the Court, That the *Poors Taxes for the ſaid Houſe*, during the Year the ſaid *Iſaac Moorman* rented the ſame, were rated or charged in the Manner following; *viz.* "*Thomas Cliſford*, OR *Tenant*."

That the ſaid *Iſaac Moorman* occupied the ſaid Houſe during the ſaid Year for which he took the ſame, and more; AND PAID the ſaid Year's Rent AND *the Land-Tax and Poors Rates and all other parochial Taxes* for the ſaid Houſe, during the whole Time that he ſo as aforeſaid occupied the ſame Houſe; and had *ſeveral Receipts* given to him, *in his own Name, by the Overſeers* of the Poor of the ſaid Pariſh of *Cirenceſter for ſeveral Payments* by him to them made *to the Poors Rates* of the ſame Pariſh; One, only, of which Receipts was produced and read in Court at the ſaid Trial: But that the ſaid *Iſaac Moorman* did *not know* whether his *Name* was or was not inſerted in the ſaid Rates.

And that the ſaid *Thomas Clifford*, during the whole Time of the ſaid *Iſaac Moorman's* ſo occupying the ſaid Houſe as aforeſaid, *lived five Miles diſtant* from the ſaid Pariſh of *Cirenceſter*.

V. Stat. 3 & 4 *W. & M. c.* 11. *ſect.* 6. and *V. Rex.* v. *Inhabitants of Sarrat, ante*, pa. 73. No. 21. where it was adjudged "That the Perſon muſt be *charged*, as well as pay." And *V. ante. Rex.* v. *Inhabitants of Uffculme*, No. 138. where Lord *Mansfield* ſeems to ſay "That the NAMING the Pauper *to* "*be the Tenant* is not neceſſary: For that it may, WITHOUT *that*, "be *ſufficient Notice* of his being an Inhabitant."

Mr. *Vernon* moved, on *Saturday* 6th *May* 1758, to quaſh theſe Orders. He inſiſted That this Man was *ſufficiently* CHARGED, to *notify* to the Pariſh of *Cirenceſter* "that he was an Inhabitant there:" And conſequently, he gained a Settlement, he ſaid, *in Cirenceſter*, by the Payment of the Rates with which he was ſo charged.

Mr.

PAINSWICK and CIRENCESTER.

Mr. *Morton* now ſhewed Cauſe: Which Cauſe was, that this Pauper's Settlement was in *Painſwick*; and that he had *not* gained a *new* one in *Cirenceſter*, becauſe he was *not* RATED there. The Caſe in 2 *Strange* 1023, *Rex* v. *Inhabitants of Bovindon* *, proves expreſsly that the *Party* muſt be *rated* in order to gain a Settlement; For that the *Rating* is the *Act of the Pariſh*, and is what *gives* the Settlement. Now it is only the *Houſe*, here, of *Thomas Clifford*: But this Man (*Iſaac Moorman*) *himſelf* is not rated; he is neither expreſsly *named*, or even *perſonally* hinted at.

Mr. *Aſton*, *contra*, for quaſhing the Orders, obſerved that the *Man* is here rated: For it is ſaid that "the Poors Taxes for the "ſaid Houſe during the Year that the ſaid *Iſaac Moorman* rented "the ſame Houſe, were thus rated or charged; *viz. Thomas Clifford*, "or *Tenant*;" *i. e. Clifford's Tenant*, which is a *perſonal* Rate.

But, however, Rating the *Houſe* is enough. The Caſe in 2 *Salk.* 478. between the Inhabitants of *St. Mary le More* and *Heavy-Tree*, is in Point "That a Rate for a *Houſe* is ſufficient, WITHOUT a "Rate on his *Perſon*."

[Lord *Mansfield* was gone up to the *Dutchy*-Court.]

The THREE other JUDGES were clear about this Matter. That the Pauper was SUFFICIENTLY *rated* to gain him a Settlement in *Cirenceſter*.

Mr. Juſtice DENISON thought that the Court ought not to be *over-nice* and critical in requiring a ſcrupulous Strictneſs as to the Form and Terms of rating Perſons. And he even hinted that Rating the *Houſe* only might, for aught that he ſaw to the contrary, be ſufficient: For the Pariſh could not but *know who was the Occupier*. Therefore he held this to be ſufficient to gain him a Settlement, having *paid* the Rates accordingly.

Mr. Juſtice FOSTER alſo held that this was a ſufficient Notice to the Pariſh; *though* the Tenant was not particularly and expreſsly *named* by his own proper Name.

Mr. Juſtice WILMOT held this to be EQUIVALENT *to* naming him. It is NOT *neceſſary* that he ſhould be *expreſsly* named.

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* Sir *John Strange* has miſtaken the Name of that Caſe: It ſhould be *Rex* v. *Inhabitants of Sarrat*. See it *ante*, No. 21. and *v. ante*, No. 29, No. 30. S. P. accord.

He

PAINSWICK and CIRENCESTER. He ſaid it had been lately ſo determined; though he did not recollect the Name of the particular Caſe.

BOTH ORDERS QUASHED.

V. poſt. No. 155, *Rex* v. *Inhabitants of Fulham*, No. 168, *Rex* v. *Inhabitants of Optnſhaw* and No. 200, *Rex* v. *Inhabitants of Stapleton*. See *alſo* the ſeveral Caſes referred to at the Bottom of *pa.* 6. 2 *Bur. Rep.* 1062, *Dougl.* 543. 599.

Michaelmas Term

32 Geo. 2. 1758.

No. 149.

Rex *v.* Inhabitants of Shenſton.

Tueſday 28th *Nov.* 1758.

A Certificate-Man may gain a Settlement, BY ESTATE, in the *Certificated* Pariſh.

TWO Juſtices removed *Iſaac Green* and *Mary* his Wife from *Aldridge* to *Shenſton* (both in *Staffordſhire:*) And the Seſſions confirmed their Order.

The Special State of the Caſe was as follows—The Pauper, with *Mary* his *firſt* Wife, who was the Daughter of one *Robert Chamberlain*, came with a *Certificate*, in the Year 1717, from *Shenſton* to *Aldridge*, and there lived with *Robert Chamberlain*, in a Houſe of the ſaid *Robert*, till his Death. The ſaid *Robert Chamberlain by his Will* dated 23d *September* 1724, *gave to his* Daughter *Mary Green, then the Pauper's Wife*, All that his Houſe Barn Garden Croft and Shed with the Appurtenances IN ALDRIDGE aforeſaid, To hold to Her *for* HER *Life*; And from and after her Deceaſe, unto *Robert Green* Son of the ſaid *Mary Green*, the ſaid *Robert Green* paying *Mary* his Siſter 5*l.* The Teſtator died ſoon after making his ſaid Will. The *Pauper and his Wife Mary* (*the Deviſee for Life* under the ſaid Will) ENTERED *upon* the Premiſes ſo deviſed, *and enjoyed* the ſame, (the ſaid Houſe being then new built, and the Premiſſes all together worth *Forty Shillings a Year*,) *from the Death* of *Robert Chamberlain*, *until the Death of Mary* his firſt Wife, which happened

pened Six Months after the Death of her ſaid Father; and CONTINUED *in the Poſſeſſion* of the ſaid Premiſſes, *till removed* by the preſent Order; without paying Rent to any Perſon. SHENSTON *and* ALDRIDGE.

The Pauper's firſt Wife left Iſſue by him, One Son named *Robert*, (the Remainder-Man in the ſaid Will;) who, many Years ſince went for a Soldier; and whether living or dead, not known, and One Daughter, named *Mary*, now living.

The Pauper, after the Death of the ſaid *Mary* his firſt Wife, married *Mary* his preſent Wife.

Mr. *Aſton* had moved, on *Thurſday* 16th *November* 1758, to quaſh theſe Orders; and had objected, "That this *Iſaac Green* the Pauper had a *Right* to this Eſtate, *when he entered* upon it; and had "continued a peaceable and *uninterrupted Poſſeſſion of it, for above* "30 *Years*, and was IRREMOVABLE from it; notwithſtanding his "coming originally into the Pariſh under a *Certificate*."

And he then mentioned the Caſes of *Aſhbrittle* and *Wiley*, *M.* 11 *G.* 1. 1 *Strange* 608. *Burclear* and *Eaſt Woodhay*, 1 *Strange* 163, 164. *Rex* v. *Inhabitants of Marwood* *, *H.* 29 *G.* 2. *B. R.* *Rex* v. *Inhabitants of Duns Tew* †. *Tr.* 29 & 30 *G.* 2. *Rex* v. *Inhabitants of Cold Aſhton* §. *H.* 31 *G.* 2. *B. R.*

* *Vide ante*, No. 124.
† No. 128.
§ No. 143.

And now Mr. *Morton*, who was to have ſhewn Cauſe againſt quaſhing theſe Orders, candidly owned that he could not undertake to ſupport them againſt ‖ ſeveral expreſs Reſolutions.

Lord MANSFIELD——So it ſeemed to Us, upon the Original Motion.

Whereupon the RULE *was made* ABSOLUTE.

BOTH ORDERS QUASHED.

‖ *V.* 2 *Salk.* 524, *inter Ryſlip* and *Harrow* Pariſhes. 1 *Strange* 502. *Cranley* and *St. Mary Guilford*. 1 *Strange* 97, *Murſley* and *Grandborough*. 2 *Strange* 983, 984. *Rex* v. *Inhabitants of Sundriſh. Ante*, No. 4. See alſo *ante*, No. 72, 75, 110. *poſt*. No. 244. *Dougl.* 738, *accord*.

Hilary Term

32 Geo. 2 1759.

No. 150.

Rex *v.* Inhabitants of Weſtbury.

Friday, 9th *Feb.* 1759.

Apprentice cannot gain a Settlement, where his Maſter is *certificated*, before he has ſerved 40 Days.

TWO Juſtices removed *William Sheers* and *Sarah* his Wife, from *St. Cuthbert's* in *Wells*, to *Weſtbury* (both in *Somerſetſhire*:) And the Seſſions confirmed this Order.

The Special Caſe was this——*William Sheers*, the Pauper, being ſettled in *St. Cuthbert's* in *Wells*, was bound an Apprentice on the 4th of *December* 1753, by Indenture of that Date, to *John Collier*, who then and for ſeveral Years before reſided in *Weſtbury*, but whoſe legal Settlement was at *Harptree*, a neighbouring Pariſh: And accordingly, the ſaid *William Sheers* entered into the Service of the ſaid *John Collier*, on the ſaid 4th of *December*. The ſaid *John Collier having been ſome Years before applied to* by the Pariſh Officers of *Weſtbury*, to obtain a Certificate from *Harptree*, (which he then promiſed to do,) did *afterwards*, on the 26th Day of the *ſame Month of December*, obtain a CERTIFICATE *from Harptree*, acknowledging him to be their Inhabitant legally ſettled: Which Certificate was, the ſame Day, delivered to the Overſeers of *Weſtbury*.

William Sheers, the Pauper, *continued with and ſerved* the ſaid *John Collier*, UNDER *the ſaid Indenture* of Apprenticeſhip, from the ſaid 4th Day of *December*, for and during the Space of *three Years*; and *reſided* all that Time, with his ſaid Maſter *John Collier* in the ſaid Pariſh of *Weſtbury*; and then married the ſaid *Sarah* his Wife.

Mr. *Gould* moved, on *Monday* 27th *November* 1758, to quaſh theſe Orders. He objected to them "That *William Sheers* gained "no Settlement in *Weſtbury*, by this Apprenticeſhip:" And relied on 12 *Ann. ſtat.* 1. *c.* 18. *ſect.* 2; which directs, "that no one "ſhall

" ſhall gain a Settlement by ſerving a *Certificate-Perſon*, as a hired " Servant or *Apprentice*."

On *Wedneſday* laſt, Mr. *Burland* and Mr. *Popham* ſhewed Cauſe Why this Order ſhould not be quaſhed: And they ſtated the Queſtion thus——Whether the Pauper ſhould be *defeated* of his Settlement, by a SUBSEQUENT Act of the *Maſter*, (an *ex poſt facto Act*,) *without* the Apprentice's Conſent; AFTER the Apprentice had not only *begun his Service*, but even actually ſerved 22 *Days* of it. They argued that he ſhall *not* be defeated of it, by this *ſubſequent* Act of the Maſter.

If he had ſerved 40 Days, it is clear that his Settlement (being thereby completely gained) ſhould not be defeated by ſuch an *ex poſt facto* Act of the Maſter.

This Queſtion depends on 12 *Ann. ſtat.* 1. *c.* 18. *ſect.* 2: Which Act, and alſo it's Preamble, they urged very particularly; and argued that this Caſe is neither within the *Words* nor *Meaning* of it; which ſhall not be taken ſtrictly. So on 3 & 4 *W.* & *M. c.* 11. *ſect.* 7. A Perſon *having* a Child or Children, is *not ſtrictly* within it; yet this has not been ſtrictly kept to.

Suppoſe a Corporator ſhould be disfranchiſed, (perhaps only in Order to become a legal Witneſs in a Cauſe,) would that diſable his Apprentice from claiming his Freedom?

Similar Caſes are, Bankruptcy Caſes under 1 *J.* 1. *c.* 15: Where a prior Settlement, fairly made by a Man upon his Children, ſhall *not* be invalidated by *ſubſequent* Bankruptcy. *Cro. Car.* 550. in the Caſe of *Criſp* v. *Pratt*. 3 *Peere Williams* 298. *Lilly* v. *Oſhborn*. In which Caſes, the Reaſon was, becauſe the Perſon was not in Debt nor a Trader at the Time of making the Settlement. So here, the Maſter was *not* a Certificate-Man, at the *Time* of the Binding.

This Right was *in Part veſted*; and therefore ſhall remain unaffected by a *ſubſequent* Act. The Right of Dower, in a Feme Covert, is not complete till the Death of the Huſband: Yet ſhe ſhall claim &c. *Perkins, ſect.* 9.

On 3 & 4 *W.* & *M. c.* 11. *ſect.* 7. and 8 & 9 *W.* 3. *c.* 30. *ſect.* 4. A Perſon unmarried at the *Time* of the Hiring, *though married afterwards*, ſhall not be precluded from gaining a Settlement. And here can be *no Retroſpect or Relation*: For Relations cannot do a *Wrong* to *Strangers*. And the prior Application of the Pariſh of *Weſtbury*, to the Maſter, to procure a Certificate from *Harptree*, makes no Difference: Or if it does, it is on our Side; for it ſhews their Acquieſcence in his remaining there without any Certificate. And the

WESTBURY and ST. CUTHBERT'S.

Pariſh of *Weſtbury* could not be hurt; becauſe it was in their Power to have removed the Maſter, *at any Time* before he had procured his Certificate.

Mr. *Gould* and his Brother, *contra*, againſt the Orders.—The Pariſh of *Weſtbury* might have removed the Maſter, and his Apprentice, and all the Maſter's Family, *within the 22 Days*, 'tis true: But there ſtill remained 18 *Days* after the Delivery of the Certificate, wherein they were *bound down* to receive them all. So that they would receive a great Injury, if there ſhould be no Retroſpect at all, in this Caſe.

This Pauper cannot be ſaid to have performed an Apprenticeſhip with a Maſter who *reſided* in this Pariſh *without* a Certificate. And this would give a great Opening to *Impoſition* upon Pariſhes: Whereas the Pariſhes *to* which Perſons come with Certificates, are to be favoured.

As to the intermediate *Marriages* of Servants between the Beginning and Completion of their Service; it has been ſo ruled, in favour of, or at leaſt not to diſcourage *Matrimony*.

This Caſe is within the Words of 12 *Ann.* if they are fully conſidered and attended to: But it is certainly within it's *Meaning*. And the Preamble of an Act does not uſe to ſpecify *all* the Miſchiefs which the enacting Clauſes intend to obviate.

Every intended Certificate-Man might, at this Rate, take Apprentices, and fix them upon other Pariſhes, by doing it without Notice, and then procuring a Certificate as ſoon as the Pariſh make any Objection to his Reſidence.

LORD MANSFIELD—This is a new Queſtion; and there is no Caſe in Point. It ſeems to Me, at preſent, that the Apprentice can *not* have here gained a Settlement in *Weſtbury*.

Before the Act, Serving under an Apprenticeſhip to a Certificate-man for 40 Days in the Pariſh where the Maſter lived would have gained a Settlement to the Apprentice in the Pariſh where the Certificate-Man reſided.

* 12 *Ann. Stat.* 1. *c.* 18. *ſect.* 2.

But the * Act ſays, "That if any Perſon whatſoever, who ſhall "be Apprentice bound by Indenture to any Perſon whatſoever, "who did *come* into, OR SHALL RESIDE in any Pariſh, by Means "or Licence of ſuch Certificate, (and not afterwards having gained "a legal Settlement in ſuch Pariſh,) Such Apprentice, by Virtue "of ſuch Apprenticeſhip, Indenture or Binding, to *ſuch* Perſon, "ſhall *not* gain any Settlement in ſuch Pariſh, by reaſon of ſuch "Apprenticeſhip or Binding."

Now

Now here is *no Service for* 40 Days, under an Apprenticeſhip to a Maſter who did not come into OR RESIDE in this Pariſh by Means or Licence of a Certificate. And this is a *precedent* Condition, "That the Apprentice muſt be bound to and ſerve *for* 40 *Days*, a "Maſter *not reſiding by Licence of a Certificate:*" Or elſe, the Apprentice ſhall not be intitled to a Settlement. Whereas the "being "*unmarried*" is only a *ſubſequent* Condition; which ſhall *not deſtroy* a Right already *inchoate*. Therefore it is not like *that* Caſe. And this Method of acquiring a Settlement might be attended with great Inconvenience, both to Pariſhes and Apprentices.

It had been a very different Caſe, I ſhould think, if the Apprentice had actually *ſerved* 40 *Days*, and regularly *completed* his Settlement thereby, *before* the Maſter became certificated.

This, he ſaid, was his preſent Opinion: But he had no Objection to conſidering further of it.

Mr. Juſtice DENISON deſired to think of it, for a Day or two.

Mr. Juſtice FOSTER and *Mr. Juſtice* WILMOT were ſilent.

Lord MANSFIELD—We will let you know our Opinions in a Day or two.

CUR'. ADVIS.

Lord MANSFIELD now delivered the Opinion of the Court; which He ſaid was agreeable to their Sentiments intimated upon the Argument: For

Their Opinion, he ſaid, upon this Binding ſo circumſtanced as is ſtated, and a Service of *only* 22 *Days* under it, by the Apprentice in *Weſtbury*, was, "That he has gained *no* Settlement there." For it is in the Nature of a *Condition* PRECEDENT to the Gaining any Settlement at all, "That the Apprentice muſt have been bound to, "and ſerved *for* 40 *Days*, a Perſon who did *not* come into OR RE-"SIDE IN the Pariſh by Means or Licence of a Certificate:" And as in the preſent Caſe, this *precedent* Condition has never been performed, he *cannot* have gained a Settlement.

And it is diſtinguiſhable from the Caſe to which it has been compared, of a Servant *hired when unmarried*, and *marrying* before his Year is expired, (which has been holden "not to prevent his Set-"tlement;") becauſe there the Event was *ſubſequent* to the Contract, which was complete and ſtrictly regular when *entered into*, and required no precedent Condition of that Kind; it being only neceſ-

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Westbury and St. Cuthbert's.

ſary to be unmarried *when hired:* So that in that *Caſe*, it is in the Nature of a Condition *ſubſequent*.

But *this* is a Condition *precedent*; And the Apprentice is under an *abſolute Diſability* of gaining a Settlement, *unleſs* he is bound *and ſerves* 40 *Days* to a Man who did *not* come into OR RESIDE in the Pariſh, by Means or Licence of a Certificate: Which this Pauper has not done: And conſequently, he has gained no Settlement by *this* Service.

BOTH ORDERS QUASHED.

V. ante, No. 54. 56. *poſt*. No. 170. 198.

Eaſter Term

32 Geo. 2. 1759.

No. 151.

Rex *v.* Inhabitants of Shenſton.

Wedneſday 9th *May* 1759.

Taking *Potatoe Grounds*, of the Value of 10*l. per annum*, for leſs than a Year, will gain a Settlement.

TWO Juſtices' removed *Thomas Lymer*, Labourer, and *Anne* his Wife from the Pariſh of *Gratwich* to *Shenſton*, (both in the County of *Stafford*:) And the Seſſions confirmed this Order.

The Special Caſe, as agreed by the Court and Counſel at Seſſions, was this——That the Pauper *Thomas Lymer* having gained a Settlement at *Shenſton*, by a Year's Hiring and Service, afterwards, to wit about fifteen Years ago, took a Houſe in the Pariſh of *Gratwich*, at *Thirty Shillings* a Year, which he has enjoyed ever ſince, till removed by this Order; and, five Years ago, took two Acres of Land in the Pariſh of *King's Bromley* in the County of *Stafford*, for the *growing of* POTATOES, FROM CANDLEMAS TO MICHAELMAS, *for Nine Pounds*; and at the ſame Time, and from the ſame Perſon took, in the ſaid Pariſh of *King's Bromley*, half an Acre of Land, at *Forty Shillings*, for the *like Term*; and paid his Rent for all

all the Premiſes, which *were of the* VALUE *aforeſaid*. The Pauper entered upon and enjoyed the Lands during the Term: And, the latter Part of the Time of his enjoying the ſame, to wit, between *Midſummer* and *Michaelmas*, He *lodged above forty Days* in the Pariſh of *King's Bromley*, where the Lands lay, for the Convenience of digging up and diſpoſing of the Potatoes.

Mr. *Aſton*, who moved, on *Thurſday* 1ſt *February* 1759, to quaſh theſe Orders, obſerved that the Act of 13 & 14 *C.* 2. *c.* 12. does not require a Taking *for* A YEAR: Which the Juſtices ſeem to have thought neceſſary.

The Words of the Act (13 & 14 *C.* 2. *c.* 12. *ſect.* 1.) are "That "upon Complaint *&c*, to any Juſtice of Peace, within Forty "Days after any ſuch Perſon or Perſons coming ſo to ſettle as "aforeſaid, in any Tenement UNDER *the* YEARLY VALUE of Ten "Pounds, it ſhall be lawful for any two Juſtices *&c*, to re"move *&c*."

RULE *to ſhew Cauſe*.

Mr. *Morton* and Mr. *Leigh* ſhewed Cauſe againſt quaſhing theſe Orders.

This Queſtion depends on 13 & 14 *C.* 2. *c.* 12.

It is agreed that the Pauper was *originally* and indiſputably ſettled at *Shenſton*. Therefore *if* he has not legally gained a *new* Settlement, either at *Gratwich* or at *King's Bromley*, He is *ſtill* legally ſettled in *Shenſton*.

But the Taking in *Gratwich* was *only* 30 *s.* a Year; and there was not an *Occupation for a Year*, of a Tenement *taken for a Year*, in *King's Bromley*; both of the Tenements in *King's Bromley* having been taken *only for* 8 *Months*. Therefore he had not gained a new Settlement in *either* of thoſe Places.

North Nibley v. *Watton Under-edge* is the Caſe, that they will rely upon. It is in *Caſes of Settlements*, pa. 66, Caſe 86. *Foley* 90, 91. and in Vol. 1. of *Seſſions Caſes*, pa. 80, Caſe 73.

By the Caſe of *Rex* v. *Inhabitants of Sandwich* *, *P.* 8. and *Tr.* 8 & 9 *G.* 2. *B. R.*—No *Reſidence* is requiſite upon the Tenement of the *greater* Value: Where the 10 *l. per Annum* ariſes from two Takings (of 10 *l.* Value together,) in two different Parithes: In ſuch Caſe, the Man is ſettled where he *reſides*, if he reſides in either of them.

* *P. ante* No. 13.

But it ought to be a *Taking for a Year*: Which this is not. Therefore it gains no Settlement.

This

Shenston and Gratwich.

This Land was hired for a *particular Purpose*, for a *Potatoe-Ground*: Where *no Stock* is requisite. And the Residence in *King's Bromley* was for the mere Purpose of looking after the Potatoes. Therefore it is not within the *Intent* of the Act of Parliament.

Mr. *Aston* and Mr. *Norton*, *contra*, admitted that the Question depended on 13 & 14 *C.* 2. *c.* 12: But insisted that *if* the Pauper *had* gained a subsequent Settlement, either in *Gratwich or* in *King's Bromley*, the Removal *to Shenston* was wrong; And that here was a clear Settlement gained in *King's Bromley*, *or* in *Gratwich*.

The *being trusted with a Taking of* 10 *l. per Annum* shews the Person *not* to be within the Meaning and Description of 13 & 14 *C.* 2. *c.* 12.

The Case of *Sandwich* was a Tenement of 10 *l. per Annum* lying in two different Parishes: And the Court went upon the *Ability* of the Man to rent above 10 *l. per Annum*; which excludes any Presumption or Likelihood of becoming chargeable. And Lord *Hardwicke* said "That *that* was the *Ground* of these Resolutions."

The Case of *North Nibley*, *M.* 1 *G.* 1. *B. R.* is in Point. It was a Taking for *less* than a Year; And the VALUE, (not the Tenure) was principally respected. Therefore though the Tenure was here for *less* than a Year, Yet the VALUE being *above* 10 *l. per Annum*, the Man was *not within the Purview* of the Act of 13 & 14 *C.* 2. *c.* 12.

The Case of *Minchinghampton* v. *Bisley*, mentioned in 2 *Strange* 874, *Tr.* 4 *G.* 2. *B. R.* turned upon it's being only the * *Pasture* of the Land, or being *Posture Ground*. Here, the Pauper has taken *twelve Pounds Ten*, in all.

* The Words in that Case were "And the *Pasture* of a Piece of Land from *All Saints* Day, till *Candlemas*." The yearly Value of it was 6 *l. per Annum*: And the Man was to pay 12 *s.* for it.

He has gained a Settlement *either* in *Gratwich or* in *King's Bromley*: It is immaterial to us, in *which* it is.

The Act of 13 & 14 *C.* 2. only means to prevent Vagrancy in such poor Persons as are UNABLE *to rent* 10 *l. per Annum*. This is the clear Intent of the Statute. And these Statutes have been *liberally* construed, in Favor of Settlements: And the Court have *always* regarded the ABILITY of the Person to rent 10 *l. per Annum*, as the Ground of their Determinations. Now the whole of this is of much greater Value than 10 *l. per Annum*.

The Justices usually consider this taking of Potatoe-Grounds for the whole *profitable* Part of the Year, as a Taking FOR *a Year*.

There is a Case in 2 *Strange* 502, *Between the Parishes of Cranley* and *St. Mary Guilford*, which proves that upon the Certificate Act of 8 & 9 *W.* 3. *c.* 11. (where the Words are "Unless He or they

" ſhall really and *bonâ fide* take a Leaſe of a Tenement of the year-
" ly Value of Ten Pounds,") a Taking *at Will*, by a Certificate-Man, is ſufficient to ſatisfy that Act. Much more ſhall a Taking for Nine Months, (the *whole profitable* Seaſon,) ſatisfy the 13 & 14 *C.* 2. And here is *no Fraud*, or Poſſibility of Fraud.

Lord *Mansfield* aſked Mr. *Morton* if he had any Caſe to prove " That a Taking *for a Year* has been holden neceſſary."

Mr. *Morton* owned, He had *not*.

Lord MANSFIELD——The firſt Matter, about the *Reſidence in the Pariſh*, is out of the Caſe: For Mr. *Morton* agrees that *if* the Taking be ſufficient; it would be a Settlement in the Pariſh where the Man *reſided*.

It ſtands therefore ſingly upon the Queſtion, " Whether this " Man's Taking above 10 *l.* a Year in the *Manner* ſtated, is a Settle-" ment." And there has been no Determination that it is neceſſary that there ſhould be a Taking FOR *a Year*.

This Act of 13 & 14 *C.* 2. *c.* 12. and the Certificate Act of 8 & 9 *W.* 3. c. 11. ought to be conſidered *together*, being in *pari Materiâ*.

There being no Determination to the contrary, I have no Doubt but that this is a Settlement, upon the Facts here ſtated.

This Man has done that which the Act of 13 & 14 *C.* 2. has made the *Criterion* of his Subſtance. The Taking One Tenement of 10 *l. per Annum* or more Tenements *amounting together* to that Value, in the *ſame* Pariſh, or in *different* Pariſhes, in the *Manner here ſtated*, is ſufficient to prevent him from being conſidered as a VAGRANT.

And here is *no Fraud* ſtated; nor is there any Suſpicion of Fraud. If there was any Fraud in the Taking, *that* would make a different Caſe. But here, the Man has *bonâ fide* taken Ground of the yearly Value of 12 *l.* 10 *s.* if we are to judge by computing the proportional Rent: And in the Nature of *this Species of Culture*, it is a Taking for the *whole Year's Profits* of the Land.

In ſome *other* Cultures beſides this, (as Woad, Rape *&c.*) it requires only a *Part* of the Year to get the Crop: And it is *ſtronger*, where the Rent for *Part* of the Year *only* is above 10 *l.* than where the 10 *l.* is payable for the *whole* Year.

Mr. Juſtice DENISON concurred.

The Reaſon why there has been no determined Caſe upon the *Duration* of the Tenure, is becauſe the Act does *not mention* any ſuch Thing as a Taking for a Year, or for any particular Time.

SHENSTON and GRATWICH.

The Act goes upon the *Credit* of the Person and his *Ability* to rent 10 *l. per Annum. Such* a Man was not considered by the Legislature as a Vagrant, or as *likely* to become chargeable to the Parish. And the *Nature of this Land* makes the present Case stronger.

I think there is no Necessity to require a Taking *for a whole Year*, It is like the Case of a Taking *at Will* satisfying the *Certificate Act*: Where the Words are the same, "the *Yearly Value* of Ten "Pounds."

The *Residence* of 40 Days upon this Taking gains the Settlement.

Mr. Justice FOSTER—It is agreed by the Counsel for the Orders, that Residence upon the Tenement of the *greater* Value is not necessary. Then taking that for granted; I have no Doubt that this is a *bonâ fide* renting a Tenement of 10 *l. per Annum* VALUE.

Potatoe-Grounds, (as every Gardiner knows,) produce their *whole* Profit in one particular Part or Season of the Year; and *no* Profit at all in the remaining Part of it. Therefore this is in Effect, and as to *this particular Culture*, much the same Thing as Taking such Ground to be so made Use of, for the *whole* Year.

Mr. Justice WILMOT concurred.

The former Point, which Mr. *Morton* very candidly and rightly gave up, being settled, "That the *Residence upon a Part* of the dif-"ferent Takings is sufficient to gain the Man a Settlement in the "Parish where he *resides*," I have no Doubt as to the Other, That the *Taking here stated* is *sufficient* to answer the Meaning and Intention of the Legislature in 13 & 14 *C.* 2. *c.* 12. For it turns upon the *Credit* and *Ability* of the Person, who is capable of hiring and is judged proper to be trusted with a Taking of the yearly *Value* of Ten Pounds.

But neither the Act of Parliament, nor any Determination upon it, have said "That it must be a Taking *for a whole Year*." And if it were to be esteemed necessary to take such a Tenement for a *whole* Year, it might be attended with great Inconveniences: Insomuch that a Man might be removed from a House even of 100 *l. per Annum* Value, which he should take only for half a Year.

And the Case of a Lease *at Will* under the Certificate Act of 8 & 9 *W.* 3. *c.* 11. is very like the present Case: For the Words of both Acts are almost exactly the same.

I

I hold it to be clear, upon this Act of Parliament, "That it *needs* "*not* to be a Taking for a *whole* Year." SHENSTON *and* GRATWICH.

Per Cur. unanimously——

RULE *made* ABSOLUTE *for* QUASHING BOTH ORDERS.

BOTH ORDERS QUASHED.

Vide post. No. 178, 185. S. P. *accord.*

Rex *v.* Inhabitants of Nether Heyford. No. 152.

Monday, 28th *May* 1759.

TWO Juſtices removed *John Gare* and *Hannah* his Wife, from *Kiſlingbury* to *Nether Heyford* (both in *Northamptonſhire*:) And the Seſſions confirmed their Order.

It appeared upon the Special State of the Caſe, That the Pauper's laſt Service for a Year, under a regular Hiring for a Year, was at a Farm-Houſe called *Dirt-Houſe*; which the Pauper ſometimes ſaid was in the Pariſh of *Nether Heyford*, and at other Times, that it was in *another* Pariſh (named in the Order of Seſſions.) But they ſtate that it lay in *One* OR *the Other* of the ſaid two Pariſhes.

ABSENCE by *Conſent* for five Weeks, before the End of the Year, will not defeat a Settlement by Hiring and Service.

This Order was, by Conſent, agreed to be too uncertain for the Court to judge upon: And it was ordered, by Conſent, that the Matter ſhould go back to the Seſſions, for them to ſtate, WHICH *Pariſh* the ſaid Dirt-Houſe ſtands in.

On *Thurſday* the 10th *May* 1759, Sir *Richard Lloyd* moved to file the New Order of Seſſions, made and returned purſuant to the laſt Rule, which was "To enlarge the former Rule for ſhewing Cauſe "why the Original Order made for the Removal of *John Gare* and "*Hannah* his Wife from *Kiſlingbury* in the County of *Northampton* "to *Nether Heyford* in the ſame County, ſhould not be quaſhed;" And alſo further Ordered, "That in the mean Time it be referred "back to the Juſtices of the Peace in and for the ſaid County, to "ſettle the Fact particularly, and to ſtate particularly *in what Pariſh* "the Dirt-Houſe (mentioned in the ſaid Order of Seſſions) lies; "and afterwards *to return the ſame to this Court.*"

Which Motion was granted; And this Order of Return ordered to be filed.

It was as follows, *viz.*

NETHER HEYFORD *and* KISLINGBURY.

In Purſuance of and Obedience to the Rule hereunto annexed, This Court [the Seſſions] doth hereby certify That upon hearing of the Appeal concerning the Settlement of *John Gare* and *Hannah* his Wife, at *Epiphany* Seſſions, 31 *G.* 2. the Fact then appeared to be, That the ſaid *John Gare* was *born in Farthingſtone* in the County of *Northampton*. That before *Michaelmas* 1754, He was hired for one Year as a Servant to *Edward Judkins*, who then lived in a Houſe called the Dirt-Houſe adjoining to a High Road leading from *Towceſter* to *Daventry*: Which Year's Service the ſaid *John Gare performed at the ſaid Dirt-Houſe*. That it did not *then* appear Whether the ſaid Dirt-Houſe was in the Pariſh of *Stow Nine Churches*, or *Nether Heyford* in the County aforeſaid. That he the ſaid *Gare* before *Michaelmas* 1756, was *hired for One Year* to Widow *Bliſs* of *Farthingſtone* aforeſaid; and continued in her Service until *five Weeks* before *Michaelmas* 1757: When WITH *his Miſtreſs's Leave*, he *parted with her* and went to work with one *Litchfield* a Farmer at *Kiſlingbury* in the County aforeſaid, and ſtayed with him, the ſaid Five Weeks, at *Kiſlingbury*. That after *Michaelmas* 1757, the ſaid *Gare* went to his ſaid Miſtreſs *Bliſs* for his Year's Wages: The whole whereof ſhe laid down to him, and he thereout *voluntarily deducted Ten Shillings for his Five Weeks Abſence*; being the ſame Sum he had earned and received for his Five Weeks at *Kiſlingbury*. That the original Contract, nor any New One, with his Miſtreſs *Bliſs* was diſſolved or made, ſave as aforeſaid. And that *if* his ſaid Miſtreſs had, during the ſaid five Weeks, *required him to return* to her, He *ſhould* have ſo done. Therefore this Court [the Seſſions] upon hearing the ſaid Appeal, for the Reaſons aforeſaid, did confirm the Original Order of Removal.

And in further Purſuance of and Obedience to the ſaid Rule, This Court [the Seſſions] doth hereby further certify, That at this preſent Seſſions, it fully appeared to the Juſtices of the Peace in the ſaid Rule mentioned, who were then preſent, on the Examination of Witneſſes, that the ſaid *Dirt-Houſe* lies and is in the Pariſh of NETHER HEYFORD aforeſaid, and not in any other Pariſh or Place.

Mr. *Caldecott*, who moved to quaſh theſe Orders, owning that it was now clear that the Dirt-Houſe ſtood in *Nether Heyford*, urged that the Pauper had gained a Settlement by his Service with the Widow *Bliſs* at *Farthingſtone*: And he cited 1 *Strange* 423, *Rex* v. *Inhabitants of Iſlip*. 2 *Strange* 1232, *St. Peter in Sandwich* v. *Goodneſtone* *.

* *V. ante*, No. 85.

Sir

Sir *Richard Lloyd contra*, inſiſted that the Pauper's Contract with the Widow *Bliſs* was totally and abſolutely *diſſolved*, by his parting from her Service * *Five Weeks* within the Year.

NETHER HEYFORD *and* KISLINGBURY.

* *V. ante*, No. 147.

CURIA ADVISARE VULT.

Lord MANSFIELD now delivered the Reſolution of the Court.

The Queſtion turns ſingly upon this, "Whether his *Abſence* "*for Five Weeks* was a *Diſſolution* of the Contract."

If he had his Miſtreſs's Leave, it was *not*: *If* he had it not, it *was*. And We are All of Opinion, that it was only an Abſence WITH *Leave*. For it appears that both Parties conſidered the Contract between them, as *ſubſiſting* and *not diſſolved*. He paid her the *Whole* that he had earned in the five Weeks that he was abſent; that is, He voluntarily deducted it from the Wages She laid down to him; conſidering himſelf as her Servant during that Time: For otherwiſe, the Deduction would not have been a Deduction of the particular *Sum earned* by him; but a Deduction in *Proportion* of his whole Year's Wages to the Time of his Abſence. And he looked upon himſelf as liable to be called back within the five Weeks.

Therefore it was only a Leave to be abſent for the *whole* Time, or for *Part* of the Time, as She ſhould call him back ſooner or later. And as She did not call him back ſooner, It was a *Leave for the whole* Five Weeks. It is ſtated that the Man was *willing to have returned* within the five Weeks, and *would have ſo done*, if his Miſtreſs had required him to do it. And the Sum deducted was not *proportioned* to the *Time* of his Abſence: Which would have been the Meaſure of Deduction if the Contract had been conſidered by them as totally diſſolved and at an End, when he went away from her. But the paying her the *exact Sum that he had earned*, ſhews, that theſe five Weeks Service was treated by them as a Part of the Service done to *Her*.

And it is ſtated, "That the Original Contract was not diſſolv-"ed, ſave as aforeſaid."

Therefore, upon the whole Circumſtances ſpecially ſtated, We are all of Opinion, "That the Contract was *not* diſſolved."

Conſequently, *The* RULE *muſt be made* ABSOLUTE, And *The* ORDERS QUASHED.

BOTH ORDERS QUASHED.

See the ſeveral Caſes cited and referred to, *ante*, No. 85.

Trinity

Trinity Term 32 & 33 Geo. 2. 1759.

No Determination of this Kind.

Michaelmas Term

33 Geo. 2. 1759.

No. 153. Rex *v.* Inhabitants of St. Matthew Bethnal Green.

Saturday 17th *November* 1759.

Children follow the Settlement of their *Father*, if he has any; if not, the Settlement of their *Mother*: And there is no Difference in this Reſpect between an *acquired* and a *derivative* Settlement.

TWO Juſtices removed * *Elizabeth Coiffeau*, Widow, and her three Children, (*John*, aged ſix Years, *Abraham*, aged upwards of four Years, and *Mary*, near three Years,) from the Pariſh of *St. Matthew Bethnal Green* to the Precinct of *St. Katharine*. The Seſſions, upon an Appeal, diſcharged this Order of the two Juſtices; Stating the Caſe ſpecially, upon their own Order.

Special Caſe ſtated upon the Order of Seſſions—*Elizabeth Taylor* was *born* in the ſaid Precinct of *St. Katharine*. She intermarried with *Edward Brazier*, whoſe Settlement is *not known*. *Edward Brazier* died, many Years ago. *Elizabeth* afterwards *intermarried with Iſaac Coiffeau*, who was a *Frenchman* and *never gained any* Settlement in *England*. The ſaid *Iſaac Coiffeau* and *Elizabeth* lived, (Both of them,) many Years together in *Bethnal Green* Pariſh: And *Abraham Coiffeau*, Son of the ſaid *Iſaac Coiffeau* and of *Elizabeth Coiffeau* (heretofore the Widow *Brazier*,) was *born in Bethnal Green* Pariſh; And *ſo was* his *Wife Mary*, (*the Pauper*,) the Daughter of *Peter Dormer*. *Abraham Coiffeau* and *Mary* his Wife *Both*

* This Name "*Elizabeth*" is a manifeſt Miſtake; It ſhould be "*Mary*."

But the Original Order is ſo. See the Note in the next Page.

lived

lived in Bethnal Green Pariſh: But *neither of them gained any Settlement* in their own Right, ſubſequent to what they might gain by being *Both born in Bethnal Green* Pariſh. *Peter Dormer*, the Father of *Mary Coiffeau* the Pauper, was *born in, and ſerved his Apprenticeſhip in* the Pariſh of *St. Leonard Shoreditch*. ST. MATTHEW BETHNAL GREEN *and* ST. KATHARINE

The Seſſions, upon Conſideration of the Premiſſes, allow of the Appeal, and diſcharge the Order of the two Juſtices.

NOTE—

The Original Order of two Juſtices is "to remove *Eliz. Coiffeau*, Widow:" But the *Certiorari* calls them "Orders "concerning the Settlement of *Mary Coiffeau*, Widow of "*Abraham Coiffeau deceaſed*;" And the Order of Seſſions deſcribes the Order of two Juſtices in the *ſame* Manner. And it ſhould be "*Mary*."

The Short of the Caſe is, That *Mary Coiffeau* the Pauper, who was *born in St. Matthew's Bethnal Green*, of a *Father ſettled in St. Leonard's Shoreditch*, became the Wife of *Abraham Coiffeau*, born in *St. Matthew's Bethnal Green*; but Son of a Father who had *no Settlement* at all, and of a Mother ſtated to have been *born* in St. *Katharine's*: And the Children are the Children of the ſaid *Abraham Coiffeau* by this *Mary Coiffeau*. The Queſtion was "Whether "*Mary* and her Children are ſettled in *St. Katharine's*, or not."

The Objection which had been taken to the Order of Seſſions, by Mr. *Stowe*, upon moving to quaſh it, was, "That the Settle- "ment of the *Anceſtor* ſhall here take Place of the Settlement by "*Birth*:" And he treated this as a *Derivative* Settlement.

Mr. Serj. *Hayward* and Mr. *Gould* (for the Precinct of *St. Katharine*) ſhewed Cauſe againſt quaſhing the Order of Seſſions.

They argued that the *accidental* Settlement (that is, the Settlement *by Birth*) of the *Child itſelf* ought clearly to take Place of the *accidental* Settlement of the *Grandmother* or any other *Anceſtor*.

Settlements were never yet carried higher, they ſaid, than to the *immediate* Parent. And *till* the Caſe of *Everſley Blackwater* v. *St. Giles's Reading*, (2 Ld. *Raym.* 1332, and 1 *Strange* 580, S. C. *H.* 10 *G.* 2. *B. R.*) a Child could not be removed even to his *own Father's* Settlement, AFTER *the Death* of the Father. But if it be carried *higher* than the immediate Parent, where ſhall the Line be drawn? The Confuſion would be infinite. 2 Seſſ. Caſ. 112. S. C.

The

St. Matthew Bethnal Green *and* St. Katharine.

V. 2 *Salk.* 528, *Inhab. of Cumner* v. *Milton. Tr.* 1 *An. B. R.*

The Place of * *Birth* is not the Settlement of any *legitimate* Child; but only of an *illegitimate* One. And here, the Settlement of this *Grandmother* is ONLY *presumed*, from it's being the Place of her *Birth*, to be the Place of her *Settlement*.

Whereas *Mary Coiffeau* had an *acquired* Settlement in *St. Leonara's Shoreditch*, by her Father Serving his *Apprenticeship* there.

Here is no Settlement in *St. Katharine's*, either *acquired* or *derivative*.

Mr. *Norton* and Mr. *Stowe contra*.

ALL Settlements are *equal*; whether by Birth, or acquired.

There is *no Limitation*, as to Settlements.

BIRTH, though *primâ facie* a Settlement, is *not* a Settlement for a legitimate Child, where the Settlement of the Parent can be ſhewn: It is only ſo, *till* a better appears; as the Caſe of *Everſley Blackwater* proves.

The Child's Settlement ſhall relate to what was the Father's at the *Time* when the Son *left* his Father's Family; And ſhall *not* follow the Settlement of it's *Mother*, if the Settlement of it's *Father* can be *found*.

But *Abraham Coiffeau*, the Father, had *no* Settlement at all; nor *his Father*, *Iſaac Coiffeau*. It was neceſſary therefore to have Recourſe to *Abraham Coiffeau's Mother's* Settlement; which is ſufficiently ſtated to be in *St. Katharine's* where She was born; *As Nothing to the contrary appears:* For Birth is a Settlement, *primâ facie*.

The Settlement of *Mary Coiffeau*, Daughter of *Peter Dormer*, is *loſt* in her *Huſband's* Settlement; and *his* Settlement, *as* Son of his *Mother*, is found to be in the Precinct of *St. Katharine's*. So that *her Father's* Settlement is out of the Caſe.

Lord MANSFIELD—There is *no Difference* between an *acquired* and a *derivative* Settlement.

The *Father's* Settlement is the Settlement of the Children.

The Father was, here, the Son of a Foreigner who *never* gained *any* Settlement, and of *Elizabeth Taylor*, who was born in *St. Katharine's*.

Upon this Order, as ſtated, it muſt be taken that *St. Katharine's*, where *Eliz. Taylor* was *born*, was the Place of her Settlement. Conſequently, *Abraham Coiffeau* her Son was legally ſettled there.

Mr. Juſtice DENISON was clear in this laſt Point—That it muſt be taken upon this Order ſtating *Eliz. Taylor* "to have been "*born* in *St. Katharine's*," that ſhe was ſettled there.

And he ſaw no Reaſon for any Diſtinction between deriving a Settlement from an *immediate Father*, or from a *Grandfather*.

ST. MATTHEW BETHNAL GREEN *and* ST. KATHARINE.

Mr. Juſtice FOSTER concurred—It is a common Caſe, that if the *Father's* Settlement cannot be found, You go back to the *Grandfather*.

Mary Coiffeau's Settlement is out of the Caſe; For *her* Settlement was that of her *Huſband*.

There is *no Diſtinction* between an *acquired* Settlement and a *derivative* One: All Paupers muſt be ſent to *ſome* Place or other, to accompliſh the End of the Acts relating to the Settlements of poor Perſons.

Mr. Juſtice WILMOT was clear in this Caſe, *if* it muſt be taken for granted "That *Eliz. Taylor* muſt be conſidered upon this "Order, as *ſettled* where She was *born*:" Of which He ſaid he had ſome Doubt at firſt; but was now clear "that it ought to be ſo taken."

The Children are always to follow the Settlement of their *Father*, if it can be *known*: And if it can be known, *then* the *Mother's* Settlement is quite out of the Caſe.

Birth gives even a *legitimate* Child a Settlement, *if* the Parents of it had none.

Abraham Coiffeau's Settlement muſt follow the Settlement of his Father, *if* his Father had any: But it could not follow his *Father's* Settlement in the preſent Caſe; becauſe his Father had *none*. But his *Mother* had one, (in *St. Katharine's*.) Therefore as his *Father* had none at all, (being a *Frenchman* who had never gained any) *his* Settlement was in *St. Katharine's*, where his *Mother* was ſettled.

There is *no Merit* in a Settlement: It depends upon *poſitive* Law. Therefore there is no Difference between an *acquired*, and a *derivative* Settlement.

And the poſitive Law in theſe Caſes of Settlements, is "That the "Child's Settlement follows that of it's *Father*, if the Father's can "be *found*; and that no Recourſe ſhall be had to the *Mother's* Set"tlement, *till* that of the Father can be *traced no further*."

But in the preſent Caſe, *Abraham's Father* had none; And therefore his *Mother's* was to be inquired into. And accordingly, the Settlement of *Abraham Coiffeau* is traced up to his Mother *Eliz. Taylor's* Settlement in *St. Katharine's*: Which is therefore the Settlement of *Abraham's* Wife and Children.

Per Cur. unanimouſly——

ORDER OF SESSIONS QUASHED.

Original ORDER AFFIRMED *. * *Vide ante*, No. 118. *accord.*

No. 154. Rex v. Inhabitants of Preſton near Faverſham.

Monday 26th *Nov.* 1759.

A *Marriage* contrary to the *Marriage* Act, is abſolutely VOID. 1 *Black. Rep.* 192, S. C. N. B. This is the *firſt* of the Settlement Caſes reported by Mr. Juſtice *Blackſtone*.

TWO Juſtices removed *Edward Young* the Younger, and *Rebecca* his Wife, and *Mary* their Child, from *Chilham* to *Preſton* near *Faverſham* (both in *Kent:*) And the Seſſions confirmed (in *all Points*) the Order of the two Juſtices.

The Caſe, as ſtated to appear to the Seſſions, was, That the ſaid *Edward Young* the Younger, being legally ſettled in *Preſton*, and not being then a Widower was on the 25th of *January* 1758, WITHOUT *the Conſent of his Father*, who was then living, *married by Licence* in the Pariſh Church of *Tenham*, to *Rebecca Drury* (who was ſettled in the ſaid Pariſh of *Tenham*, and who is removed to *Preſton* by the ſaid Order, AS *the* WIFE of the ſaid Pauper,) the ſaid *Edward Young* being *then an* INFANT of 20 Years: And that afterwards, the ſaid *Rebecca* was brought to Bed, in the Pariſh of *Chilham*, of the ſaid *Mary*, removed by the Order. Whereupon they adjudged and ordered That the ſaid Order ſo made by the two Juſtices be, in *all* Points, confirmed.

Mr. *Lee*, who had moved, on *Thurſday* the 22d *November* 1759, to quaſh theſe Orders, objected to that *Part* of them which relates to the *Woman* and *Child:* For that the *Marriage* was ABSOLUTELY *null* and *void*, by the expreſs Words of the Marriage-Act 26 G. 2. *c.* 33. *ſect.* 11. As the Pauper not being a Widower, and being *under Age*, was married by Licence, WITHOUT *the Conſent of his Father* (who was then living.)

Mr. *Knowler* was to have ſhewn Cauſe now, againſt quaſhing them. But he owned that the Words of the Act were ſo ſtrong that he could not get over them; (being "That it ſhall be *abſolutely* null and void to all Intents and Purpoſes *whatſoever:*") UNLESS, (he ſaid,) the Court ſhall think a *Declaratory Sentence* to be neceſſary.

But Mr. *Robinſon*, who was on the ſame Side, entered into the Defence of theſe Orders, and cited 2 *Strange* 1060, *between the Pariſhes of St. Peter* and *St. Nicholas in Ipſwich**; to ſhew that the Word "void" may be conſtrued "*voidable.*" He alſo cited the Caſe of *Barber* v. *Dennis*, in 1 *Mod.* 69, and in 1 *Salk.* 68, where it was holden to be immaterial Whether the Apprentice *de facto* was *legally* ſo, or not. (And he obſerved that in 2 *Strange* 1067. The

* *Vide ante* No. 28.

PRESTON and CHILHAM.

The Caſe of *Cuerdon* v. *Leyland* is taken Notice of, and diſtinguiſhed from the Caſe *then* before the Court.) So, on 23 *H.* 6. *c.* 10. and 21 *H.* 8. mentioned in *Hob.* 166, in the Caſe of *Winchcombe* v. *Biſhop of Wincheſter and Pulleſton.* So, on *Weſtm.* 2. So, on 8 *H.* 6. *c.* 10. concerning Sheriffs Bonds, (inſtanced in the ſame Caſe in *Hobart.*) So, on 1 *Eliz. c.* 19. concerning College Leaſes. (there alſo mentioned.)

He urged, that it is highly *unreaſonable*, that a virtuous young Woman and her innocent Children ſhould be turned adrift, and be conſidered as a Whore and Baſtards, without having any *Opportunity to conteſt* ſo ſevere a Judgment againſt them.

Therefore this Marriage ought to be avoided *by a Sentence* in the Eccleſiaſtical Court; and not in a *Collateral* Method, by an *ex parte* Order of Juſtices made WITHOUT *hearing them or any Perſon on their Behalf.*

Mr. *Norton, contra*, was beginning to ſpeak. But

Lord MANSFIELD (conceiving the Point to be clear, and commending Mr. *Knowler* for his Candour in giving it up,) ſtopt Him; and took the Diſtinction between Acts of Parliament made againſt *One* of the Parties, and for the *Benefit of Another* of the Parties, (and where ſuch Other Party has an *Election* either to take Benefit of it, or not;) and Acts of Parliament made *againſt* BOTH.

This is an Act made *againſt* BOTH: And the Marriage is * thereby expreſsly declared "abſolutely null and void to ALL Intents and "Purpoſes *whatſoever*."

* *V.* ſect. 11.

So that it is not like the Caſes cited, nor like the Caſes on the Statute of Bigamy 1 *Jac.* 1. *c.* 11. Which was made only againſt *One* of the Parties.

THE OTHER JUDGES concurred with his Lordſhip: And *They* alſo obſerved that this Act was made againſt *Both*; And

Mr. Juſtice FOSTER added—"Againſt the *innocent* CHIL-"DREN of Both." And He ſaid it would be againſt the Spirit of the Act to underſtand it *otherwiſe* than that the Marriage ſhall be ABSOLUTELY *void.*

Wherefore, *Per Cur.*—

The ORDERS muſt be confirmed as to the Man; but quaſhed as to the *Woman* and *Child.*

RULE accordingly; *viz.*—

BOTH ORDERS *quaſhed* as to *Rebecca* and *Mary*, And *affirmed* as to *Edward.*

See *Douglas*, pa. 634. *accord.* But the Miſchief in that Caſe has been ſince remedied by the Statute, 21 Geo. 3. c. 53.

No. 155. Rex *v.* Inhabitants of Fulham.

Wednesday Nov. 28th, 1759.

A Tenant may gain a Settlement, by being *aſſeſſed* to and *paying* the Land-Tax; although it be allowed him again by his Landlord.

TWO Juſtices removed *Alice Brooks*, Widow of *John Brooks*, and her four Children by him, (naming and deſcribing them,) from *St. Margaret's Weſtminſter* to *Fulham*: And the Seſſions confirmed their Order, Stating the Caſe ſpecially.

CASE—*John Brooks* deceaſed, late Huſband to *Alice*, being ſettled at *Fulham* 14 Years ago, afterwards took a Meſſuage or Tenement in *St. Margaret's Weſtminſter*, at 6*l.* 10*s.* a Year. He entered into and continued in Poſſeſſion thereof ſeveral Years; And during his Reſidence in the ſaid Meſſuage or Tenement; He the ſaid *John Brooks* was *aſſeſſed* and *taxed*, *by the Aſſeſſors of the Land-Tax there*, in Proportion to his ſaid Rent, for the LAND-*Tax* due in reſpect of his occupying the ſaid Premiſſes; *and* PAID the ſaid Tax or Aſſeſſment, during ſuch his Occupying and Reſidence in the ſaid Meſſuage or Tenement, *to the Collector* of the Land-Tax in the ſaid Pariſh of *St. Margaret*. Afterwards he was ALLOWED the ſaid Tax or Aſſeſſment *by his Landlord*, on his ſettling his Account with him for the Rent of the ſaid Houſe. The ſaid *John Brooks* never gained any Settlement in any Pariſh ſince. *Alice Brooks*, his Widow, and her four Children by Him (naming them) are become poor: And neither the ſaid *Alice* or either of the ſaid Children have gained any Settlement in their own Right. The Seſſions therefore ratify and confirm the Original Order and diſmiſs the Appeal.

Mr. *Norton* (who had moved to quaſh theſe Orders) ſaid the Juſtices had determined wrong, from imagining that *John Brooks* had gained no Settlement in *St. Margaret's*, becauſe he was *allowed* the *Land-Tax* again by his Landlord. To prove which, He cited the following Caſes—(all determined in this Court,) *Rex* v. *Inhabitants of Oakhampton* *, *M.* 7. *& Paſch.* 7 *G.* 2; the Caſe of the Tide-waiter, who was rated and paid to the Land-Tax for his Salary; but was repaid by the Collector of the Cuſtoms. † *Rex* v. *Inhabitants of Chidingfold*, in *H.* 30 *G.* 2. § *Rex* v. *Inhabitants of Uffculme*, in *Tr.* 1757, 30 & 31 *G.* 2. and *Rex* v. *Inhabitants* of ‖ *Painſwick*, in *Tr.* 1758, 31 *G.* 2.

* *V. ante*, No. 3.
† *V. ante*, No. 132.
§ *V. ante*, No. 138.
‖ *V. ante*, No. 148.

Mr. *Burton* new ſhewed Cauſe againſt quaſhing the Orders; and Mr. *Morton* ſupported him. They Both argued from the Inconvenience;

venience; and would have had it ſuppoſed that it was the Collector of the Land-Tax, and not the Pariſh Officer, who made the Aſſeſſment.

FULHAM and ST. MARGARET'S WESTMINSTER.

Mr. *Norton* and Mr. *Stowe*, *contra*, cited the Caſe of * *Armley* v. *Bramley*; Where it was determined, That the being aſſeſſed and paying two quarterly Payments to the Land-Tax gained a Settlement: And inſiſted that this was a Point long ſince, and very often, fully and formally ſettled.

And upon that Foot, of its being a *ſettled Point*,

The COURT made the RULE ABSOLUTE.

Both ORDERS QUASHED.

* *Rex* v. *Inhabitants of Bramley*, *H.* 9 *G.* 2. *V. ante*, No. 22. See alſo *poſt*. No. 168, 200. Accord.

Hilary Term

33 Geo. 2. 1760.

Rex *v.* Inhabitants of Hitcham. No. 156.

Thurſday 31ſt *Jan.* 1760. Order of Seſſions *amended*, in a Matter of Subſtance, requiring Examination. And Hiring and Service a Settlement.

TWO Juſtices made an Order for the Removal of *Thomas Death* and *Anne* his Wife and ſeveral of their Children (naming and deſcribing them) from *Hitcham* to *Ringſhall* (both in *Suffolk*.) Upon Appeal to the Seſſions, they ſet aſide the Juſtices Order, ſtating the Caſe ſpecially.

CASE—The ſaid *Thomas Death*, the Father, AND *Anne his* WIFE, having a legal Settlement in *Ringſhall*, afterwards, about 18 Years ago, for a Year, *without Wages*, will gain

Hitcham and Ringshall.

ago, before the *Michaelmas* in that Year, LET *himſelf for One Year*, to *William Death* his Brother, who was a legal Inhabitant of *Hitcham*, and exerciſed the Trade of a *Carpenter* in the ſaid Pariſh; and entered his ſaid Service at *Hitcham* aforeſaid, and continued his ſaid Service for a Year according to his ſaid Contract: But was, by his Agreement with his Brother, to receive NO *Money by Way of Wages*; but his Brother was to teach him as much as he could, during the ſaid Year, of the *Trade* of a Carpenter; and his Brother was to provide him Meat Drink Waſhing and Lodging during the ſaid Time; And the ſaid *Thomas Death* was to do all his ſaid Brother's lawful Buſineſs in his *Farming Way*, (the ſaid *William*, his Brother, occupying a ſmall Farm at *Hitcham* aforeſaid;) and was employed by his ſaid Brother in his ſaid Buſineſs of a *Carpenter* and his *farming Way*, and in *doing any other Work* that his ſaid Brother ordered him; And particularly, in the *Harveſt-time*, the ſaid *William Death* having taken ſome Corn to cut, of a neighbouring Farmer, the ſaid *William Death* ordered the ſaid *Thomas Death* to cut it, which the ſaid *Thomas Death* did; And the ſaid *William* his Maſter, took the Money for cutting it. And it further appeared (to the Seſſions) that the ſaid ſeveral Children had not gained any Settlement, ſeparate or diſtinct from their ſaid Parents. Whereupon, the Seſſions were of Opinion, that the ſaid *Thomas Death* gained a legal Settlement for himſelf and for his ſaid Wife and for their ſaid ſeveral Children, in the ſaid Pariſh of *Hitcham*, by Reaſon of the Facts above ſtated. And therefore allow the Appeal, and ſet aſide the Order of two Juſtices for removing them from *Hitcham* to *Ring ſhall*.

In *Michaelmas* Term laſt, Mr. *Norton* moved to quaſh this Order of Seſſions: Becauſe, as the Pauper was a *married* Man with a Family, he could not gain a Settlement by a Hiring and Service; And this *Letting* Himſelf is nothing more than a HIRING *for a Year and a Service for a Year*.

Afterwards, Mr. *Morton* (who was for the Pariſh of *Ring ſhall*) moved That the Order of Seſſions might be ſent down to be *amended* in the *State of the Facts*. He produced an Affidavit "that the "Pauper was *not*, in Fact, a *married* Man at the Time of his letting himſelf to his Brother for a Year; nor was his being a "*ſingle Man* at that Time, at all conteſted: But that the Recital "of his having a Wife at that Time was inſerted by a *Miſtake*; "And that it then *appeared* to the Seſſions, upon the Evidence, "that he was then a *ſingle* Man."

Lord

Lord MANSFIELD—Otherwiſe, there is no Queſtion about the Settlement: And I wondered at it's being made one. HITCHAM *and* RINGSHALL.

A Rule was made to ſhew Cauſe why the Order of Seſſions ſhould not be ſent back in order to be amended. Which Rule was now made abſolute, though very ſtrenuouſly defended: For the Court thought it likely to be a Miſtake, for two Reaſons. One of them was an Obſervation of Mr. Juſtice *Deniſon's* "That *if* he was *not* "a *Single* Man at the Time of his Hiring himſelf, no Queſtion at "all could have ariſen at the Seſſions, about the Reſt of the Caſe." The other Reaſon to ſuſpect that it was a mere Miſtake, was added by Mr. Juſtice *Foſter*; Namely, "That the Counſel concerned for "the Pariſh of *Hitcham* were ſo vehement in their Oppoſition to "it's being ſtated agreeably to the real Truth of the Fact."

The Seſſions thereupon re-examined the Matter, and heard *new* Evidence, which proved the ſaid *Thomas Death* to have been a *ſingle* Man at the Time of the Hiring: And they amended their Order accordingly *.

* *V. Poſt.* No. 161. Page 504. *Trin.* 33 & 34. G. 2. 1760. S. C. But ſee *ante*, No. 58. that an *original Order* of two Juſtices cannot be amended, at the *Seſſions*, in a Matter of *Subſtance*, requiring *Examination*.

Rex *v.* Inhabitants of Weyhill. No. 157.

Wedneſday 6th *Feb.* 1760.

SERVICE alone, without a proper *Hiring*, will not gain a Settlement. 1 *Black. Rep.* 206. S. C.

TWO Juſtices removed *John Pollard Weſt*, from *Corſe Caſtle* in *Dorſetſhire* to *Weyhill* in *Hants*: And the Seſſions, upon an Appeal, confirmed their Order.

The Facts were ſtated by the Seſſions, to appear to them, on the Evidence of the ſaid Pauper, (the only Witneſs produced on either Side,) to be as follows; *viz.* That *Thomas Weſt* deceaſed, reſiding and being legally ſettled in *Corſe Caſtle*, about the Year 1711, had Iſſue the Pauper; who continued *there* with his Father, till he was about eight Years of Age: At which Time, his Father being under Misfortunes, *Robert Pyke* Eſq; (ſince deceaſed) who then lived in the Pariſh of *Worth Matraverſe* in the ſaid County of *Dorſet*, and to whom a ſmall Eſtate that belonged to the ſaid *Thomas Weſt* the Father was then in Mortgage, took the ſaid Pauper into his Family, FROM CHARITY, and gave him his Meat Drink Lodging and Clothes, while he continued with him; which was about two Years in

WEYHILL and CORFE CASTLE.

in the ſaid Pariſh of *Worth Matraverſe* aforeſaid, and afterwards Four Years more in the ſaid Pariſh of *Weyhill*, (to which Pariſh the ſaid Mr. *Pyke* and his Family removed.)

That neither at or before the Time of the ſaid *Pyke's* taking the Pauper into his Family, nor at any Time after, was there *any* CONTRACT between the ſaid Parties, in Relation to the Pauper's *Service* of the ſaid Mr. *Pyke* or his *Continuance* with him, or to any *Wages* or *other Gratuity* to be paid him therefore.

That during the Pauper's Continuance with the ſaid Mr. *Pyke*, he was employed in running of Errands and doing whatſoever the ſaid Mr. *Pyke* or his Servants thought fit to bid him. That *no Wages* was ever paid or given him. And that, in the *Pauper's Apprehenſion*, he was, during all the Time aforeſaid, *at* LIBERTY TO QUIT the ſaid Mr. *Pyke*; Or, the ſaid *Mr. Pyke to turn him off*; as either Party ſhould think fit.

That the Pauper quitted the ſaid Mr. *Pyke* and the ſaid Pariſh of *Weyhill*, after *Four Years* Reſidence there as aforeſaid; and hath done no Act, to gain a Settlement, except as aforeſaid.

The Seſſions were of Opinion, "That, at this *Diſtance of Time*, "a *Hiring for a Year*, agreeable to the Statute, between the ſaid "Mr. *Pyke* and the Pauper or his Father, ought to be PRESUM-"ED;" and DO PRESUME the ſame accordingly: For which Reaſon *only*, they are of Opinion and do adjudge that the Settlement of the ſaid *John Pollard Weſt*, the Pauper, is in the ſaid Pariſh of *Weyhill*; and therefore confirm the Order of the two Juſtices.

Mr. *Glynn*, who, on *Thurſday* 22d *November* 1759, moved to quaſh theſe Orders, ſaid That the Seſſions were miſtaken in their Opinion; and had no Right to make this *Preſumption*, contrary to the Evidence.

RULE *to ſhew Cauſe.*

Mr. *Gould*, on Behalf of *Corfe Caſtle* Pariſh, now ſhewed Cauſe againſt quaſhing them.

Upon a regular Service for above a Year, a *Hiring* ſhall be *preſumed*: It was ſo, in the Caſe *between the Pariſhes of* * *Crediton* and *Wincaunton*. In the preſent Caſe, the Lad continued *Six Years* in the Service.

* *Rex* v. *Inhabitants of Wincaunton*, *M.* & *H.* 1750. 24 *G.* 2. *B. R. V. ante*, No. 107. and the Caſes there cited, pa. 301.

Wages

WEYHILL and CORFE CASTLE.

Wages are not neceſſary:* So the Caſe juſt now cited proves. The *Pauper's Apprehenſion* does not vary the Caſe: And ſo the ſame cited Caſe proves. The only Witneſs ſpeaks to a Tranſaction when he was *but* 8 *Years old*. And he *might* have been hired out *by his Father*, though not by Himſelf.

* See the laſt Caſe.

Mr. *Norton contra*, for *Weyhill* Pariſh, and for quaſhing the Orders.

A *Hiring* is as eſſential as a Service. And if the Juſtices have drawn a *wrong Judgment* upon the Facts ſtated, the Court will quaſh their Order. It is manifeſt, there was no Hiring at all: Mr. *Pyke* took the Pauper into his Family, FROM CHARITY.

THE COURT were clear that this was *no Hiring* at all, *no Contract:* But he was taken OUT OF CHARITY, a Child 8 Years old, to run on Errands and do whatever he was bid; and left Mr. *Pyke*, when he came to be 14 and capable of doing more Service. And it is expreſsly ſtated "That there was *NO *Contract*."

Indeed where there is a *Hiring ſtated*, the Court will preſume it to have been a regular One; (unleſs the contrary appears:) And *that* was the Caſe of *Wincaunton*. A *General Hiring* was there *ſtated:* But here was *no Hiring at all*.

Per Cur. unanimouſly—

RULE MADE ABSOLUTE.

BOTH ORDERS QUASHED.

* *V.* Poſt. No. 160, *Rex* v. *Inhabitants of Berwick St. John*, *P.* 1760, holden to be a Hiring for a Year; though the Contract was not *quite explicit*.

Eaſter Term

33 Geo. 2. 1760.

No. 158. **Rex *v.* Inhabitants of Chriſtchurch.**

Saturday 3d *May* 1760.

ABSENCE, *through Sickneſs*, at the *End* of the Year, will not defeat a Settlement by Hiring and Service. 1 *Blac. Rep.* 214 S. C.

TWO Juſtices made an Order for the Removal of *Elizabeth Maxey* Spinſter, from *Chriſtchurch* to *St. Matthew's Bethnall Green*, (both in the County of *Middleſex:*) And the Seſſions, upon an Appeal, diſcharged the ſaid Order; Stating the Caſe ſpecially.

The ſpecial Caſe ſtated——On the 24th of *Auguſt* 1757, the ſaid *Elizabeth Maxey* was hired into the Service of *Robert Gilman* of *Chriſtchurch*, for a Year; and *continued* in ſuch Service there, from that Day TILL THE 7TH OF AUGUST *then next following*; When She was *frightened into Fits*, and *thereby rendered incapable of doing* ANY *Service*. That her Maſter being taken very ill, and being diſturbed by the ſaid *Elizabeth Maxey's* Fits, her Miſtreſs deſired the Siſter of the ſaid *Elizabeth Maxey* to go with the ſaid *Elizabeth Maxey* to one Mr. *Lemonier's* in the ſaid Pariſh of *St. Matthew Bethnall Green* (where the ſaid *Elizabeth Maxey's* ſaid Siſter then lived as a Servant,) and to *requeſt Mrs. Lemonier to receive her* into their Houſe, that ſhe might be there under the Care of her Siſter: But if the ſaid Mr. *Lemonier* refuſed to admit her, ſhe was then to bring the ſaid *Elizabeth Maxey back* to her ſaid Maſter's Houſe again. That Mr. *Lemonier* accordingly *received Her*; and She reſided there *about Five Days*; and then ſhe was taken into the *Hoſpital*. That the Day after the ſaid *Elizabeth Maxey* had been received into Mr. *Lemonier's* Houſe, She *returned* to her ſaid Maſter's Houſe, *to fetch away her Cloaths:* And her *Miſtreſs gave her two Shillings*; which, with what She had before received, made up the *full Year's Wages*. That NO WORDS *of Diſcharge* paſſed between the ſaid Pauper and her Miſtreſs: But the ſaid *Elizabeth Maxey* LOOKED UPON Herſelf as then *diſcharged* from her ſaid Service; *but believed* that had She recovered her Health, her Maſter *would have received her again* into his

his Service. That She *continued under the ſame Indiſpoſition, till after the Year* from the ſaid Time of Hiring was expired; and *never returned again* into her ſaid Maſter's Service. And that on the 17th of *Auguſt* 1758, her Maſter *hired another Servant in her Place.*

CHRIST-CHURCH *and* ST. MATTHEW'S BETHNAL GREEN.

And it is admitted, on Behalf of the Appellants, That the ſaid *Elizabeth Maxey* was legally *ſettled* in the ſaid Pariſh of *St. Matthew Bethnall Green*; *Unleſs* a ſubſequent One was gained by Her in the ſaid Pariſh of *Chriſtchurch*, *under* the abovementioned Circumſtances.

The Seſſions, upon Conſideration of the Premiſſes, allowed of the Appeal, and vacated the Order of the two Juſtices: And they further Ordered the Pauper to be removed from *St. Matthew's Bethnall Green* to *Chriſtchurch*, and require the Pariſh of *Chriſtchurch* to *receive and provide* for Her, until they can free themſelves from the Charge thereof by due Courſe of Law.

On *Tueſday* 12th *February* 1760, Mr. *Norton* moved to quaſh this Order of Seſſions, and to affirm the original Order: and obtained a

RULE *to ſhew Cauſe.*

Mr. *Norton's* Objection to this Order of Seſſions was "That this "SERVICE in *Chriſtchurch* was *not* ſufficient to gain a Settlement; "being ſeventeen *Days* SHORT *of the Year* for which She had "been hired."

Mr. *Aſton* and Mr. *Stowe* now ſhewed Cauſe; and argued this to be a GOOD *Service*, within 8 & 9 *W.* 3. *c.* 30. *ſect.* 4.

This was either an *Inability by* SICKNESS, or *an Abſence with* LEAVE of her Maſter. In *either* Caſe it is a good Settlement.

In 1 *Strange* 423, 424, *Rex* v. *Inhabitants of Iſlip*, Sickneſs during ſix Days in the Middle of the Year, was no Objection to the Service; Nor Abſence three Days, at the End of the Service, upon a reaſonable Cauſe; Nor an Abſence of four Days, without Leave, in the Middle of the Year. So, in the Caſe of * *Rex* v. *Inhabitants of Goodneſton, Tr.* 19 *G.* 2. *B. R.*—Leave to go to the Herring-Fiſhery, though the Servant was abſent about three Weeks at the End of the Year, and did not return till three Weeks after the Expiration of it was held a good Settlement.

* 2 *Strange* 1232. *Ante*, No. 85.

In the Caſe of † *Rex* v. *Beccles*, (cited in 2 *Strange* 1207,) Abſence, by his Maſter's Leave to work for other Perſons three Weeks and three Days (in all) was holden "not to prevent the Gaining a "Settlement."

† *P.* 1744, 17 G. 2. B. R. *V. ante*, No. 78.

CHRIST-CHURCH *and* ST. MATTHEW'S BETHNAL GREEN.

And here are *no Words of Diſcharge*; nor any *Conſent* of the Maſter to her being diſcharged.

Beſides, the Maſter was *bound to provide for and take Care* of her, while ſhe was ſick: And therefore it muſt be taken that ſhe *continued in the Service*. The Failure aroſe only from the *Act of God*.

Mr. *Norton*, Mr. *Morton*, and Mr. *Lane*, *contra*——argued that this Service was *inſufficient* to gain her a Settlement in *Chriſtchurch*: For ſhe did not "*continue and abide* in the Service, one *whole* Year," as the Act of Parliament expreſsly requires.

In the *Iſlip* Caſe, The Servant's Abſence (to viſit his Mother) and his Sickneſs too, were in the *Middle* of the Year: And the Abſence was *purged*, by the Maſter's *receiving him again*. And the 3 Days Abſence at the *End* of the Year, (to go to the Statute-Fair) was holden to have been unreaſonably oppoſed and denied by the Maſter, and with a fraudulent declaration "that the Servant ſhould gain no "Settlement with him."

In the *Goodneſton* Caſe, where the Servant went to the Herring-Fiſhery—It was holden that the Servant was to be conſidered as all the While *in* the Service of the Maſter; It being by Leave, and another Perſon hired by the Servant to do the Buſineſs: And the Servant returned again to his Maſter after the Expiration of the Year, and received from him his whole Year's Wages.

But here, the Abſence was 17 Days at the *End* of the Year; and She *looked upon herſelf* as *diſcharged*; and the Maſter *hired another Servant* in her Place. If this be allowed at the *End* of the Year, where can the Court ſtop? It may as well be a Want of 3 Weeks, or a Month, or 2 Months.

* *V. ante*, No. 20.

In 2 *Strange* 1022, *Seaford* v. *Caſtlechurch* *, "Going away (without Leave) 12 Days before the End of the Year, prevented a "Settlement; though the Maſter paid him the whole Year's "Wages."

The *Maſter's Generoſity*, in paying the whole Wages, makes no Difference in the Caſe. To gain a Settlement, there muſt be a *complete* Hiring for a Year, AND SERVICE for a Year: So it was determined in 1 *Strange* 143, *Coombe* v. *Weſtwoodbay*; Where a Week being wanting at the *Beginning* of the Year, it was holden to be no Settlement.

The Acquiring a Settlement in a Pariſh, by Service, is *no Benefit* to the *Servant*: For a Servant has *no more Benefit* (in general) by having a Settlement in *One* Pariſh, than in *Another*.

CHRIST-CHURCH *and* ST. MATTHEW'S BETHNAL GREEN.

Lord MANSFIELD——This Caſe is an additional Proof, amongſt many others, upon how inconvenient a Foot the Law of Settlements ſtands.

This muſt appear a very clear Caſe to any Perſon of common plain Senſe and Underſtanding. It is certainly a fair *bonâ fide Service for a Year*, without any Fraud on either Side, either of the Maſter or of the Servant.

If a Maſter gives his Servant *Leave* to go upon any other Service, or to be abſent for a ſhort Time, and pays him his *whole* Wages, This is a fair *bonâ fide* Service.

If the Servant is taken *ill*, by the Viſitation of God, It is a Condition incident to Humanity, and is *implied* in all Contracts. Therefore the Maſter is *bound* to provide for and take Care of the Servant ſo taken ill in his Service *; and *can not deduct* Wages in Proportion to the Continuance of the Servant's Sickneſs.

Here, the Maſter requeſted Mrs. *Lemonier* to take in his Servant; the Maſter himſelf being, at the ſame Time, ſick at Home. Then She was afterwards ſent to the Hoſpital by her *Maſter's Conſent*. And the Maſter and Miſtreſs paid Her her *whole* Wages, and were *ſatisfied* with what was done. Can any one doubt of this being a Service, *bonâ fide*, for a Year? Being ſent to an Hoſpital by a kind Maſter ought not to hurt the Settlement of a Servant viſited by Sickneſs.

And I ſee no Difference between ſuch an Accident of *Sickneſs* happening in the *Middle*, or happening at the *End* of the Year: It is equally the Act of God, and without any Fault of the Servant.

Mr. Juſtice DENISON ſaid He thought this the weakeſt Ground of Objection to a Settlement that he had ever met with. He concurred with his Lordſhip, That the Illneſs of the Servant happening at *One* Part of the Year, or at *Another*, (being always the Act of God,) could make no Sort of Difference. And he was extremely clear that this *Act of God* ought not to prevent the Servant from gaining a Settlement. And if, by the Conſent of the Maſter, She be ſent to an *Hoſpital*; ſhall that alter the Caſe, and make it different from her being kept at Home in the Maſter's own Houſe? Surely, not. She certainly does "*continue and abide in the Service*" of her Maſter. For, "*Continuing and abiding* in the Service," means

* This Doctrine muſt be underſtood with ſome Sort of Allowance. For in a late Caſe of *Newby* againſt *Wiltſhire*, *P.* 25 *Geo* 3. *B. R.* the Court held, that an Overſeer cannot maintain an Action againſt the Maſter, for Money paid, on account of chirurgical Aſſiſtance, *&c.* for his *yearly* Servant.

"*Not*

CHRIST-CHURCH *and* ST. MATTHEW'S BETHNAL GREEN.

"*Not deſerting it:*" And ſhe can not be conſidered as having *deſerted* her Service.

There was no Need of any Caſes being cited upon this Occaſion: That of *Iſlip* comes *neareſt* to the preſent Caſe.

Mr. Juſtice FOSTER concurred with his LORDSHIP and *Mr. Juſtice* DENISON. He ſaid that the Relation between the Maſter and Servant certainly *continues:* It is not put an End to, by this *Viſitation of God.* And He obſerved that the Sending her out of the Maſter's Houſe to Mr. *Lemonier's*, and afterwards to the Hoſpital, was for the *Eaſe* of the Maſter, and for his own Convenience.

Mr. Juſtice WILMOT ſaid It was the cleareſt Caſe that could be.

The Diſtinction between the Servant's Abſence in the *Middle* and at the *End* of the Year, turns upon the Abſence in the Middle of the Year being *purged* by the Maſter's *receiving the Servant again*; which is not the Caſe of an Abſence at the *End* of his Year, when He does not return.

But with Regard to the Act of God, *Illneſs*; It is juſt the ſame Thing, whether *that* happens at the Beginning, Middle or End of the Year: The *Time* makes *no Difference*, in the Reaſon of the Thing. And in the preſent Caſe, the Servant's being at Mr. *Lemonier's*, or in the Hoſpital, is juſt the ſame Thing as her being kept in the Maſter's Houſe, under his own Roof.

I do not agree to the Poſition "That the Servant has *no Benefit* "by gaining a Settlement in a Pariſh." It is *not* indifferent to a Servant (very often) in *what Pariſh* he gains a Settlement: It is, in many Caſes, an Advantage, in Fact; and has always been, and ought to be looked upon as ſuch. It is a *Reward* for their Labour and Service: And in *that* Light, it is but reaſonable to conſider it.

Mr. Juſtice FOSTER agreed with *Mr. Juſtice* WILMOT, in this. Is it Indifferent to a FOREIGNER who has *no* Settlement of his own? It is certainly a Benefit to *ſuch* a Perſon: For He *obtains* a Settlement by the Hiring and Service, inſtead of being (as he was before) without any Settlement at all.

Per Cur. unanimouſly——

ORDER *of* SESSIONS CONFIRMED.
ORDER *of two Juſtices* QUASHED.

Vide poſt. No. 211. S. P. *accord.*

Rex

Rex *v.* Inhabitants of Kniveton. No. 159.

Friday 9th *May*, 1760.

A Settlement cannot be gained by a TENEMENT *under* the yearly *Value* of 10*l.* And the *Value* muſt be eſtimated, *primâ facie*, according to the *Rent*.

TWO Juſtices removed *Iſaac Wibberley* and *Mary* his Wife, and *Iſaac* his Son, and *Mary* and *Elizabeth* his two Daughters, from *Kniveton* to *Tiſſington*, both in the County of *Derby*.

On Appeal, the Seſſions ſtate this Caſe——That *Iſaac Wibberley*, being *ſettled at Tiſſington*, did upon *Lady-day* 1749, take *and enter* upon a *Farm at Kniveton*, of the Yearly Value of *Eight* Pounds, of Mr. *Hanſon* Vicar of *Kniveton*, To hold from *Lady-day* 1749, *to Lady-day* 1750. And that alſo, at the ſame Time, He *with* one *Thomas Hill*, JOINTLY *took and entered upon another Farm* in the ſame Liberty, of *Thomas Daniel*, To hold from *Lady-day* 1749 *to Lady-day* 1750, of the Yearly Value of 3*l.* 15*s.* And at the ſame Time of taking the ſaid Farm of 3*l.* 15*s.* it was agreed between the ſaid *Iſaac Wibberley* and *Thomas Hill* "That *Thomas Hill* ſhould have "and take *One Half of the Corn and Hay* to be cut from the ſaid "Farm of 3*l.* 15*s.* Rent; And that the ſaid *Iſaac Wibberley*, *after* "that the ſaid *Thomas Hill* had taken and carried away his Half "Part of the ſaid Corn and Hay, ſhould be poſſeſſed of and occupy "the *Whole* Farm of 3*l.* 15*s.* Rent, till *Lady-day* following; pay-"ing to the ſaid *Thomas Hill* 4*s.* for the ſaid *Hill's* Share, of the ſaid "Farm." And that the ſaid *Thomas Hill* did on or *before the firſt Day of October* 1749, take and carry away One Half of the ſaid Hay and Corn; And that the ſaid *Iſaac Wibberley* did *thereupon* immediately take and continue the Poſſeſſion of the *whole* Farm, till *Lady-day* 1750; and paid the ſaid 4*s.* to the ſaid *Thomas Hill* for the ſame.

All which Facts being ſtated ſpecially to the Court of Seſſions by the Counſel on the Behalf of the Appellants, and conſented unto by the Counſel on the Behalf of the Defendants; And the Court [of Seſſions] being EQUALLY DIVIDED in Opinion; They allowed the Caſe to be found as ſtated; in Order that the Appellants might take the Opinion of the Court of *King's Bench* at *Weſtminſter*, and the Matter be finally determined there.

Mr. *Edward Wilmot* moved, (on *Saturday* 23d *June* laſt) to quaſh theſe * *Orders*; And a Rule was taken "to ſhew Cauſe Why the "*Orders* ſhould not be quaſhed."

* But, in Fact, this Act of the Seſſions is *no Order* at all: For it neither confirms nor diſcharges the Original Order, but, in Effect, adjourns the Appeal *hither*. Yet no Notice was taken of this, at the Time of making the Motion.

NOTE—

Kniveton and Tissington.

Note—After the foregoing Motion and the Rule thereupon made "To shew Cause why the Orders should not be "quashed;" A *subsequent Rule of this Court* was made (on *Wednesday* next after 15 Days from *Saint Martin*, 33 G. 2.) whereby it was Ordered "That the Orders returned with "the *Certiorari* in this Case be sent back to the Sessions."

In Consequence whereof, at the *Epiphany* Sessions holden on the 15th of *January* last, That Court made an Order, whereby (after reciting the former Transactions, and also that the Counsel had alledged "that the Court of *King's Bench could not proceed* to give Judgment, for Want of "the Court of Sessions having either confirmed *or* discharg-"ed the former Order,") They therefore Order That the "said Order of Removal be *discharged*."

This second Order of Sessions being returned up, in Obedience to the abovementioned Rule of this Court——

Mr. *Ley* (on Behalf of the Parish of *Kniveton*) moved upon *Tuesday* the 12th of *February* last, to quash it; and obtained a Rule to shew Cause Why it should not be quashed.

(Note—This Case had now *changed it's Name*: For, upon the Order of Removal from *Kniveton* to *Tissington* being discharged by the Sessions, the Parish of *Kniveton* became chargeable with the Paupers; and, according to the Rule prefixed to these Papers, were to be named Defendants here: Whereas, *before* this last Order of Sessions, the Parish of *Tissington* stood charged with them, and consequently were at *that* Time to be named Defendants here.)

To this Order of Sessions (discharging the Original Order of the two Justices, who had holden the Settlement to be at *Tissington*,) Three Exceptions were taken on Behalf of the Parish of *Kniveton*, who *now* stood charged under the present Order of Sessions.

Two of them were not very important: And the Court laid no Sort of Stress upon either of them in reversing the Order of Sessions.

One of them was "That it did not appear that the Pauper *resided* "in *Kniveton*:" (Though it is stated "That he *entered upon* the "Farm there and *continued the Possession &c.*")

The

KNIVETON and TISSINGTON.

The Other was, "That the Juſtices at Seſſions had *no Juriſdiction* "to make this preſent Order of Diſcharge; becauſe the former Seſ- "ſions had not, upon the Original Appeal, adjourned ſuch Appeal "to a *ſubſequent Seſſions*, but to the Court of *King's Bench*."

But the material and principal Objection was, "That this Caſe "as ſtated upon the Orders, appeared to be a Tenement UNDER "*the* YEARLY VALUE *of Ten Pounds*, within the Intent and Mean- "ing of the Statute of 13 & 14 *Car.* 2. *c.* 12."

The Counſel for the Pariſh of *Tiſſington* denied this, and alledged "That it was ABOVE the Yearly Value of 10*l.*" Which they thus endeavoured to prove.

V. ante, No. 111. and the Authorities there cited.

Firſt—They argued that *Wibberley*, the Pauper, was *liable*, (as being *Joint-Tenant* with *Hill*,) to *anſwer for* and pay the *Whole* 3*l.* 15*s.* And, moreover, that he was *Sole* Tenant of that Farm, for and during the *laſt* Half Year.

Secondly—But taking it at the ſtricteſt, it is really and properly a Payment of 10*l.* 1*s.* 6*d.* *per Annum*, by *Wibberley* the Pauper. For he is to pay * 8*l.* *per Annum*; *plus*, Half 3*l.* 15*s.* (which is 1*l.* 17*s.* 6*d.*) *plus* 4*s.* for the laſt Half Year; Which is, in all 10*l.* 1*s.* 6*d.*

But The COURT unanimouſly held "That this Tenement "thus rented by the Pauper, in *Kniveton*, was UNDER the Yearly "*Value* of 10*l.*"

The Act of Parliament fixes the Yearly *Value* at *Ten Pounds*: And the VALUE muſt be eſtimated by the *Rent*; and always is taken to be *according to the Rent*.* And here, the Rent is 8*l.* *per Annum* and the half of 3*l.* 15*s.* Which two Rents taken together, do *not* amount to 10*l.*

* *Tamen quære*; *& vide ante*, No. 47. 59. *Poſt*. No. 185, 260. by which it ſhould ſeem, that the *Value* is the true Criterion, independant of the *Rent*.

Indeed, He was to pay *Hill* 4*s.* for the Advantage he was to have, after the Crop was off. But an Agreement of this Sort, between the two Joint-Tenants can not be conſidered as a *Rent*.

Wherefore, *Per Cur.* unanimouſly,—

ORDER *of* SESSIONS *quaſhed*:
ORDER *of two Juſtices affirmed*.

8*l.* + $\frac{3l.\ 15s.\ 0d.}{2}$ + 4*s.* = 10*l.* 1*s.* 6*d.*

No. 160. **Rex v. Inhabitants of Berwick St. John.**

Monday 12th *May* 1760.

TWO Juſtices made an Order for the Removal of *Benjamin Beach* and *Mary* his Wife and *Elizabeth* and *William* their Children, from *Hanley* in *Dorſetſhire* to *Berwick St. John's* in *Wiltſhire:* And the Seſſions, upon an Appeal, confirmed this Order; Stating the Caſe ſpecially.

A GENERAL HIRING is a *Hiring for a Year*, where there are no Circumſtances to the contrary.

Special Caſe ſtated—Sometime in *September*, 1756, The Pauper, *Benjamin Beach*, being then an unmarried Man and legally ſettled in *Hanley*, happening to meet Mr. *Stephen Jones*, then Head-Keeper of *Ruſhmore-Lodge* (One of the Lodges of *Cranborne Chace*,) Who reſided at *Ruſhmore-Lodge* aforeſaid, which lies within the Pariſh of *Berwick St. John* aforeſaid, and had then *lately parted* with one *Edward Hill*, who had been for many Years One of his Servants or Under-Keepers at the Wages of 3*l. a Year* and a Keeper's Livery beſides Meat Drink and Lodging; The ſaid Mr. *Jones* addreſſed the Pauper in theſe Words, "*Do you like the Life of a Keeper?*" Which being anſwered in the Affirmative, He ſaid further, "*Then go into "Ned Hill's Place; And you ſhall want no Encouragement: I'll "give you a Suit of Clothes directly.*" That the Pauper readily *conſented*; and *without further Converſation, went immediately into the ſaid Service, and continued therein for the Space of three Years*, reſiding all that Time with his ſaid Maſter at *Ruſhmore-Lodge* aforeſaid within the Pariſh of *Berwick St. John* aforeſaid. That upon or ſoon after his entering into the ſaid Service, he was furniſhed with a *Keeper's Livery*; was, during the ſaid three Years, provided with *Meat Drink and Lodging*; and at the End thereof, was paid 9*l.* for his Service. That at the Time of the Converſation beforementioned, the ſaid Pauper did *not know* upon *what Terms* the ſaid *Hill* had ſerved the ſaid Mr. *Jones*. That the Pauper's Service being agreeable, the Queſtion "Whether or no he was at Liberty to *quit* it," never occurred to him: But that in *his Apprehenſion*, if it had been *diſagreeable*, he *ſhould* have thought himſelf at Liberty to have quitted it, *ſince Nothing to the Contrary* had been ſtipulated between them, in the Converſation beforementioned. And that the ſaid Pauper *thought* he *ought* to be paid the *ſame Wages Hill* had; but did *not conſider himſelf* as having a *legal Title to Wages*, ſince there had been NO *mention of any*, in the Converſation beforementioned. That the

ſaid Pauper, after quitting the ſaid Service, married the ſaid *Mary* now his Wife, and had Iſſue by her the Children mentioned in the Order; and has done no Act to gain a Settlement, except as aforeſaid. Therefore the Seſſions are of Opinion "That the Settlement "is in the Pariſh of *Berwick St. John*;" and therefore *confirm* the Order of the two Juſtices. BERWICK ST. JOHN *and* HANLEY.

Mr. *Glynn*, who moved to quaſh theſe Orders, on *Wedneſday* the 6th of *February* laſt, objected, "that this was NO HIRING in the "Pariſh of *Berwick St. John*;" and cited a * Caſe *between the Pariſhes of Gregory Stoke* and *Pitminſter*, *in M.* 13 G. 1. *B. R.*

* *V. Seſſ. Caſ.* Edit. 1750, 2d Vol. 132, Caſe 120.

RULE *to ſhew Cauſe.*

Mr. *Norton*, Mr. *Grove*, and Mr. *Dunning*, now ſhewed Cauſe Why the Orders ſhould not be quaſhed; And argued this to be a *Hiring for a Year:* For the Law knows *no other* Servant but One *for a Year*. *Co.* 1 *Inſt.* 42. *b.* A *General* Hiring is a Hiring *for a Year*. So, on 5 *Eliz. c.* 4. *ſect.* 7. Beſides, this has an expreſs *Reference* to HILL's Service; Which was for a Year.

This Point was fully diſcuſſed and ſettled in the Caſe of *Rex* v. *Inhabitants of Wincaunton*†, 31ſt *January* 1750: (*Crediton* was the other Pariſh.)

† *V. ante*, No. 107. And ſee the Caſes there cited, p. 391.

The Caſe cited *between the Pariſhes of Gregory Stoke* and *Pitminſter*, is not like this: *That* was a Living with a Grandmother.

Mr. *Gould*, and Mr. *Glynn*, *contra*—Here is *no actual Hiring at all:* And None can ariſe by *Implication*, from the bare *Service alone*. *Pitminſter* Caſe was holden to be no Hiring for a Year.

The *Reference* to *Ned Hill's Service* relates to *Hill's Work* only; not to his *Contract:* For the Pauper did *not know* upon what TERMS *Hill* had ſerved Mr. *Jones*.

They mentioned a § Caſe of a Boy who lived from 8 Years of Age till he was 14, with his Maſter; and yet was holden to have gained no Settlement.

§ *V. ante*, No. 157. *Rex* v. *Inhabitants of Weybill.* *N. B.* There, it was expreſſly ſtated *"That there was* NO *Contract."*

The Statute of 5 *Eliz. c.* 4. *ſect.* 7. enacts "That every Boy, above "12 Years of Age, ſhall be compellable to be hired in Huſbandry." And in *Wincaunton*-Caſe, the Boy was 17, and was hired in Huſbandry.

Lord MANSFIELD—This Man ſerved three Years; and received three Years Wages: But it is objected "that he was *never* "HIRED *at all*."

BERWICK ST. JOHN *and* HARLEY.

It is admitted "That *if* He was hired at all, it would, by Law, "be a Hiring *for a Year*." And upon this Dialogue ſtated in the Order of Seſſions, it is a *clear Hiring*: For *Hill* was a *hired* Servant.

Therefore the Juſtices have done right.

The THREE OTHER JUDGES were clear of the ſame Opinion.

Both ORDERS AFFIRMED.

Trinity Term

33 & 34 Geo. 2. 1760.

No. 161.

Rex *v.* Inhabitants of Hitcham.

Friday 13th *June* 1760.

Recognizance diſcharged, upon an *Amendment* of the Order of Seſſions.

THE amended Order was now affirmed:

But, being made on *new Evidence* (proving him to have been a Single Man at the Time of the Hiring,)

THE COURT thought it reaſonable, and accordingly Ordered that the

RECOGNIZANCE BE DISCHARGED.

V. ante, No. 156. S. C. *poſt. pa.* 687. S. P.

Michaelmas Term 1 Geo. 3. 1760.

No Determination of this Sort.

Hilary

Hilary Term 1 Geo. 3. 1761.

Nor in this Term.

Easter Term 1 Geo. 3. 1761.

Nor in this Term.

Trinity Term 1 Geo. 3. 1761.

Nor in this Term.

Michaelmas Term 2 Geo. 3. 1761.

Nor in this Term.

Hilary Term 2 Geo. 3. 1762.

Nor in this Term.

Easter

Eaſter Term

2 Geo. 3. 1762.

No. 162. **Rex** *vs* **Inhabitants of St. Devereux.**

Thurſday 13th *May* 1762.

Publication of Bans, or an *Entry* of the Marriage, properly ſigned, not neceſſary to be proved, in Support of a Marriage. 1 *Black. Rep.* 367. S. C.

TWO Juſtices removed *Suſannah Meredith* from *Much Dewchurch* in the County of *Hereford* to *St. Devereux* in the ſame County: Which Order was confirmed by the Seſſions, on Appeal; who ſtated a ſpecial Caſe, as follows, *viz*; That *Suſannah Meredith* was, before her *ſuppoſed Marriage* with *John Meredith* herein after named, ſettled in the Pariſh of *St. Devereux* aforeſaid; and that the ſaid *John Meredith* was and is legally ſettled in the Pariſh of *Langaran* in the ſaid County; and that he was not in the Pariſh of *St. Devereux* aforeſaid, at the Time of the ſaid Order. And it was proved upon the Oath of *James Bowen*, "That he and one *William* "*Jones* were preſent on the 7th Day of *February* 1758, when a "*Marriage was ſolemnized* in the Pariſh Church of *St. Devereux*, "between the ſaid *Suſannah* and *John Meredith*, by the Miniſter of "the ſaid Pariſh, *by* BANS." And it appearing that the ENTRY of the ſaid Marriage in the *Regiſter-Book* of the ſaid Pariſh was made in Manner following, to wit, "1758, *John Meredith* and *Suſannah* "*Jenkins were married* BY BANS;" But *neither* the *Miniſter Par*-"*ties* or *Witneſſes* SIGNED the ſaid Entry; and that *no other Entry* of the ſaid Marriage was ever made; this Court [the Seſſions] is of Opinion "That *ſuch Marriage was* NOT LEGALLY PROVED;" and therefore doth confirm the ſaid Order.

Mr. *Morton* having, on *Saturday* the 1ſt of *May* 1762, obtained a Rule to ſhew Cauſe why theſe Orders ſhould not be quaſhed.

Mr. *Griffith Price* now ſhewed Cauſe againſt that Rule, and endeavoured to ſupport the Orders; inſiſting that this appeared upon the Caſe, as ſtated, to be a VOID Marriage; For, although the Omiſſion of Bans was *originally* only an Offence againſt the *Eccleſiaſtical* Law; and even after the Statute of 7 & 8 *W.* 3. *c.* 35. *ſect.* 2. the *Parſon* and

Clerk

Clerk and Man married without Licence or Bans were only liable to a *Penalty*, yet *ſince* the Act of 26 *G.* 2. *c.* 33. *ſect.* 14, 15, an ENTRY of this, properly *ſigned*, is become ſo ESSENTIAL a Circumſtance, that *without it* the Marriage itſelf is NULL AND VOID. St. Devereux *and* Much Dewchurch.

But THE COURT were of a different Opinion.

And *Lord* MANSFIELD ſaid, It was *not* incumbent on the Perſons married, to *prove* "That the Bans were publiſhed;" nor does the Entry directed to be made, affect the Validity of the Marriage.

But at the ſame Time he declared that it was a Matter of *great public Concern*, for the Preſervation of Pedigrees, (which were now become very difficult to prove:) And the Entry *ought* to have been made according to the Directions of the Act.

He went ſo far as to declare That an *Information* ought to be granted by the Court againſt the Miniſter for omitting it, if it ſhould appear clearly that it was owing to his Neglect; and that ſuch Information ſhould be proſecuted by the Attorney General, at the King's Expence; which he did not doubt would be readily directed, upon the Recommendation of the Court: And he ordered the preſent Fact to be further inquired into *.

Per Cur.——

RULE *made* ABSOLUTE for QUASHING *both* ORDERS.

* *N. B.* It came out, afterwards, that the regular Entry had been made; and that produced to the Juſtices, was only a Minute or *Memorandum*: So the Miniſter was juſtified. Had it been otherwiſe, the Court would have ordered a Proſecution.

Trinity

Trinity Term

2 Geo. 3. 1762.

No. 163.

Rex v. Inhabitants of Stockland.

Wednesday 30th *June* 1762.

Cohabitation for 30 Years as Man and Wife, ſufficient Evidence of Marriage.

TWO Juſtices made an Order for the Removal of *John Moes* otherwiſe *Maſon*, *Mary* his Wife, *Mary*, *Elizabeth*, *John*, *Thomas*, *Sarah* and *Hannah* their Children from *Stockland* in *Devonſhire* to the Pariſh of *Chardland* in the County of *Somerſet*: And the Seſſions, upon Appeal, quaſhed that Order.

The *Special* CASE ſtated was this——*John Moes* and *Elizabeth Maſon*, the Father and Mother of the firſt named Pauper, being both reſident in the Pariſh of *Chardland*, about the Year 1723 or 1724, went from thence together, declaring "They were *going* "*to be married*;" and ſoon returned, declaring "They *had been* "*married*;" and from thenceforward *cohabited* as Man and Wife for the Space of about *thirty* Years, and *until the Death of the ſaid Elizabeth*. The firſt-named Pauper was born in the ſaid Pariſh of *Chardland* in the Year 1725; and there baptized, and his *Baptiſm regiſtered* AS *the Son of John and Elizabeth Moes*. The ſaid *John* and *Elizabeth*, for ſome Years before the Death of the ſaid *Elizabeth*, removed from the ſaid Pariſh of *Chardland* into the ſaid Pariſh of *Stockland*, and there acquired a Settlement by renting a Farm of 50 *l.* a Year Value; which the ſaid *John* ſtill continues to rent and occupy. They carried with them, from *Chardland* to *Stockland*, the ſaid Pauper their Son; who there married, and had Iſſue the other Paupers beforementioned: And neither of them appeared to have done any Act to gain a Settlement. Whereupon, the Settlement of the ſaid Paupers appeared to depend on the Queſtion "Whether "the ſaid *John* and *Elizabeth*, the Father and Mother of the firſt-"named Pauper were to *be* CONSIDERED *as Huſband and Wife* "at the *Time of his Birth*." Upon which, it was contended on

Behalf of the ſaid Pariſh of *Stockland*, "That the ſaid *John* and "*Elizabeth* were *never married*; or, if they were, that the ſaid *Eli*- "*zabeth had a former Huſband then living*." Concerning which, ſeveral Witneſſes having been examined on both Sides; on the Part of the ſaid Pariſh of *Stockland*, the ſaid JOHN MOES THE FATHER WAS CALLED AS A WITNESS *in order* (as was ſuggeſted) *to deny the Fact of any Marriage between* HIMSELF *and the ſaid Elizabeth, and to prove that the ſuppoſed other Huſband was then living*. But it being objected, on Behalf of the ſaid Pariſh of *Chardland*, "*That* "*the ſaid John Moes* OUGHT NOT TO BE RECEIVED *to give his Teſ*- "*timony*;" The Court [of Seſſions] was of *that Opinion:* And the ſaid Witneſs *was* NOT *received*. Now upon Conſideration of the Evidence before the Court [of Seſſions,] and hearing what hath been alledged by the Counſel on both Sides, This Court [the Seſſions] is of Opinion "That the ſaid *John Moes* and *Elizabeth Maſon*, are ſuf- "ficiently proved to have been lawfully married at the Time of the "Birth of their ſaid Son; and that the Settlement of the ſaid Pau- "pers is in the ſaid Pariſh of *Stockland*." They therefore order the ſaid Order of the two Juſtices to be diſcharged: And they order the Churchwardens and Overſeers of *Stockland* to pay to thoſe of *Chardland* the Sum of 1 *l.* 8 *s.* for the Maintenance of the Paupers from the Time of the Removal to that Time.

STOCKLAND *and* CHARDLAND

On *Wedneſday* the 16th Inſtant, Mr. *Glynn* moved to quaſh this Order of Seſſions, and to affirm the original Order.

His Objection was, "That the Seſſions *ought* to have *admitted* the "*Father* to give Evidence of his *never having been lawfully mar*- "*ried*."

To prove which, he cited a Caſe of *St. Peter's* in *Worceſterſhire* and *Old Swinford* *, *P.* 8 *G.* 2. *B. R.*

But *Lord* MANSFIELD ſeemed to think that *thirty Years Cohabitation* as Man and Wife was ſufficient Proof to the Juſtices to found an Order of Removal upon. †

* *Vide ante*, No. 9. *pa.* 25.

† *Vide* 4 *Burr.* 2057. 1 *Blac. Rep.* 632. *accord.*

However, *A Rule was made to ſhew* CAUSE.

But on the laſt Day of this Term, Mr. *Glynn* gave up his Objection; and, by Conſent, the

ORDER *of* SESSIONS *was* AFFIRMED:
And the Recognizance DISCHARGED.

Michaelmas Term 3 Geo. 3. 1762.

No Determination on this Subject.

Hilary Term 3 Geo. 3. 1763.

Nor in this Term.

Easter Term 3 Geo. 3. 1763.

Nor in this Term.

Trinity Term 3 Geo. 3. 1763.

Nor in this Term.

Michaelmas Term

4 Geo. 3. 1763.

Rex. *v.* Inhabitants of Titchfield.

No. 164.

Saturday 26th *Nov.* 1763.

Apprenticeſhip diſſolved, by the Indentures being *given up*, though not *cancelled*.

MR. *Cornwall* ſhewed cauſe why an Order of Seſſions made for quaſhing an original Order of two Juſtices made for the Removal of *Philip Warfill* and *Anne* his Wife, and *William* and *Sarah* their Children, from *Titchfield* to *Milford* (both in the County of *Hants*) ſhould not be quaſhed; and why the ſaid original Order ſhould not be affirmed.

It appeared upon the Order of Seſſions, that on ſuch a Day the Difference between the Churchwardens and Overſeers of *Milford* and thoſe of *Titchfield*, touching the Settlement of *Philip Warfill* and *Anne* his Wife, and *William aged five Years*, and *Sarah* aged 1½ Year, their Children, coming then before the Court, upon the Appeal of the ſaid Pariſh of *Milford* againſt the Order of *James Ward* and *John Brett* Eſquires two of his Majeſty's Juſtices of the Peace *&c*, adjudging the Settlement of the ſaid *Philip* and his Wife and Children to be in *Milford*; And the Matters and Merits of the ſaid Appeal being fully heard by the Court, and argued and debated by Counſel on both Sides, The Court [of Seſſions] is of Opinion and doth order and adjudge "that the ſaid recited Order ought to be "quaſhed," and the ſame is hereby quaſhed accordingly; and doth order that the ſaid *Philip Warfill* and *Anne* his Wife and *William* and *Sarah* their ſaid Children be ſettled in the ſaid Pariſh of *Titchfield*, there to be provided for according to Law: For that the ſaid *Philip Warfill* bound himſelf an *Apprenticē* by *Indenture* dated 24th Day of *March* in the Year 1761, for three Years, to *William Footner* Maſter and Mariner; and that he the ſaid *Philip Warfill* inhabited above 40 Days with his Maſter in the ſaid Pariſh of *Milford*; that the ſaid *Philip Warfill* falling *ſick*, he, *on account* THEREOF, with the *Conſent*

TITCHFIELD and MILFORD.

of his ſaid Maſter, *went to his Father* in the Pariſh of *Bewley* in the ſaid County, and *there continued* 40 *Days*, and was SICK ALL THAT TIME, and to the preſent Time; and on his going to his Father, the ſaid *Indentures* were *mutually* GIVEN UP, *but* NOT CANCELLED.

Mr. *Cornwall*, in ſupport of the Order of Seſſions, argued

1ſt, That it appeared manifeſtly, by comparing Times and Dates, That this *Philip Warfill* muſt have been a MARRIED *Man* at the Time when he bound himſelf Apprentice: For it is ſtated upon the Seſſions Order "That he had a Child of five Years of Age at the "Time that Order was made; and that he bound himſelf Appren-"tice in the Year 1761." Conſequently he was married when he bound himſelf. And he urged that as the Statute of 3 & 4 *W. & M. c.* 11. requires Celibacy in a *hired* Servant in one Clauſe, the ſubſequent Clauſe concerning Apprentices muſt be conſtrued to require *them alſo* to be unmarried. See Sections 7 and 8.

2dly, That *Warfill* the Pauper was ſettled in *Bewley*, by inhabiting 40 Days, with his Maſter's Conſent. And the *Delivering up* the Indentures was *not* a ſufficient Diſcharge of the Apprentice, without *cancelling* them; as appears by *Dalton* 180.

Mr. Solicitor General (*Norton*) *contra*—anſwered

1ſt, That his being a *married* Man when he bound himſelf an Apprentice is *not expreſsly ſtated* or meant to be made *Part of the Caſe*; but is a mere Inference now made at the Bar, by the Counſel. But, however, the Act *does not require* this Circumſtance of Celibacy in an *Apprentice*, though it does in a *hired* Servant. *Sect.* 7. relating to *hired* Servants, ſays "If any *unmarried* Perſon;" *Sect.* 8. ſays, relating to *Apprentices*, "If *any* Perſon:" So that the Act itſelf makes an *eſſential* Difference between the two Caſes.

2dly, An *Inhabitancy by Reaſon of Sickneſs* ſhall *not* gain a Settlement. Suppoſe a Servant breaks his Leg in a Strange Pariſh, and can not be removed within 40 Days; ſhall that gain a Settlement there?

And there is *no Difference* between the Indenture's being *given up*, and its being *cancelled*: They amount to the *ſame* Thing.

The COURT being of the ſame Opinion with Mr. Solicitor General——

The ORDER *of Seſſions was* QUASHED: And
The Original ORDER AFFIRMED.

Vide ante, No. 95, 142. *Poſt.* No. 180, 193, 239. *accord.*

3 Rex

Rex v. Inhabitants of St. Peter's in Dorcheſter. No. 165.

Monday 28th *Nov.* 1763.

An *indefinite* HIRING, *to work by the Piece*, will not gain a Settlement. 1 *Blac. Rep.* 443. S. C.

TWO Juſtices made an Order for the Removal of *John Millwood*, *Catharine* his Wife, *John* (aged eleven Years) *Anne* (aged five Years) and *George* (aged two Years) their Children from the Pariſh of *The Holy Trinity* in the Borough of *Dorcheſter* to that of *St. Peter* in the ſame Borough: And upon an Appeal to the Seſſions, they confirmed the ſaid Order of the two Juſtices.

The Order of Seſſions ſtates the Facts as follows——

That the Pauper *John Millwood* was *born* in the Pariſh of *The Holy Trinity*: But his *Father's* Settlement was in *St. Peter's*. Soon after his Birth, his Father died: And his Mother marrying again to one *Edmund Oldis*, an Inhabitant of *The Holy Trinity*, when the Pauper her Son was about ſix Years old, the Son removed with his Mother to the Houſe of his Step-Father, and reſided there till the Age of ſixteen; During all which Time he was employed by his Step-Father in his Trade of a Button-maker; who had the Benefit of his Labour without any other Compenſation than Maintenance and Pocket-money, as the Step-father thought fit.

About the Age of ſixteen, the Pauper inſiſting on a larger Allowance for his Labour, and the Step-Father refuſing to allow it him, the Pauper left his Step-Father's Houſe, and went to *Briſtol*. After paſſing ſome Time there, he returned to the Pariſh of *The Holy Trinity*: Where he and his Step-Father came to an Agreement, by which the Son was to *live* with the Step-Father in his Houſe, and to *work* as before at his Trade, and to be *paid at the Rate of* ONE PENNY PER GROSS *for the Buttons he ſhould make* (being the *ſame Wages* as the Step-Father paid to the *other Workmen* he employed) deducting at the Rate of 5*s.* a Week for his Meat Drink Waſhing and Lodging. There was NO OTHER *Hiring or Agreement* between the Parties.

Under *this* Agreement the Pauper lived and worked with his Step-Father in the Pariſh of *The Holy Trinity* four or five Years, and *received Wages*, and paid for his Maintenance at the Rate agreed on. But the Step-Father *Oldis*, who was examined as a Witneſs, declared he *thought himſelf at Liberty to have turned the Pauper off*, or *the Pauper to have left him at any Time*, if *either* of them had been

ſo

St. Peter and The Holy Trinity.

ſo diſpoſed; there being nothing expreſſed in the Agreement to the contrary. The Pauper had done no other Act to gain a Settlement: And the Wife and Children had no other Settlement than what they derived from their Father. Upon Conſideration of theſe Facts, and hearing what had been alledged by Counſel on both Sides relating to the Settlement of the ſaid Pauper, The Court [of Seſſions] were of Opinion "that his Settlement is in the Pariſh of *St. Peter*." It was therefore ordered that the before recited Order ſhould be, and it was thereby confirmed.

Mr. *Dunning* moved, on *Friday* the 13th of *May* 1763, to quaſh theſe Orders.

He ſaid This was good as an *indefinite Hiring*; and cited the Caſe of *The King* againſt *The Inhabitants of Berwick St. John*, *ante* No. 160, pa. 502.

See alſo *ante*, No. 107. and the Caſes there cited, *pa.* 301.

Rule *to ſhew Cauſe.*

And now Mr. *Dunning*, aſſiſted by Mr. *Thurlow*, argued that this was a *Hiring for a Year*, by Implication.

They inſiſted that here was *a* Hiring: And an indefinite Hiring is a Hiring *for a Year*.

At firſt, indeed, there was no Contract: But after the Pauper's Return from *Briſtol* to his Step-Father's Houſe in *Holy Trinity*, the Step-Father and he came to an Agreement whereby they *became Maſter and Servant*.

They ſaid that the Caſe of the Inhabitants of *King's Norton* and *Camden*, relating to one *Mary Calcut*, a Spinner, was the ſame Point with the preſent Caſe; only that *that* was an *expreſs* Hiring for a Year, whereas *this* is ſo only by *Implication*: But that was a Hiring of the *ſame Sort* * as the preſent.

* It was ſo, *v. Rex* v. *Inhabitants of King's Norton*, Tr. 1740, 13 & 14 G. 2. *ante*, No. 52. *pa.* 252,

Mr. Solicitor General *contra* (and Mr. Serjeant *Glynn* was on the ſame Side,) for the Order of Seſſions——

This is *only a* Service in *Holy Trinity*: There is no Hiring *there for a Year*, either expreſs or implied; nor any *Reference* to a Hiring for a *Year* or for *any certain Time* whatſoever. On the contrary, It was *unfixed as to Time*; it was to laſt *only ſo long* as *both* ſhould agree: Each was at their own Liberty; and ſo it was underſtood by the Step-Father himſelf. So that the Pauper lived only as a *Journeyman* with his Step-Father, and was hired upon that Foot and no other, and might have gone away and returned as often as he pleaſed, being to receive Pay in Proportion to his *Work*, and *not* to his *Time*.

In

ST. PETER *and* THE HOLY TRINITY.

In the Case of *Berwick St. John*, there was a *Reference* to a former Hiring of *Ned Hill*, who was a hired Servant by the Year: And upon the whole, it appeared to be *intended* as a Hiring for a Year, into *Ned Hill's* Place.

The case of *Weybill* and *Corfe Castle* * was much the same Case with the present: And that was holden to be no Hiring at all.

Lord MANSFIELD—This is the Case of a Workman hired to work by *the Piece*. It is not like any of the Cases where there was a Hiring *for a Year*. There was a Case somewhat like this, about burling of Cloth †.

Indeed Hiring in general and indefinitely gives a Presumption of a Hiring for a Year, where the Nature of the Service and subsequent Facts concur to render it probable that it was *so meant*: But the *Nature of the present Service* is quite otherwise.

It is very clear, in *this* Case, that there was NO *Hiring for a Year*, either express or implied. Therefore the

RULE *must be* DISCHARGED.

Per Cur.—

ORIGINAL ORDER *and* ORDER *of* SESSIONS AFFIRMED.

* *H.* 1760, 33 *G.* 2. *Rex* v. *Inhabitants of Weybill*, *ante*, No. 157, pa. 491.
† *V. ante*, pa. 280, No. 98, *Rex* v. *Inhabitants of Wrington*.

Hilary

Hilary Term

4 Geo. 3. 1764.

No. 166. Rex *v.* Inhabitants of Salford.

Tueſday, 31ſt *Jan.* 1764.

A *Son* cannot derive a Settlement from his Father under a PURCHASE for *leſs* than 30*l.*

1 *Blac. Rep.* 433, 455. S.C.

ON *Wedneſday* 15th *June* 1763, Mr. *Morton* ſhewed Cauſe why an Order of Seſſions quaſhing an order of two Juſtices made for the Removal of *Peter White* the Younger and *Mary* his Wife from the Pariſh of *Salford* in the County of *Oxford* to the Hamlet of *Over Norton* in the Pariſh of *Chipping Norton* in the ſame County, ſhould not be quaſhed; and why the ſaid original Order ſhould not be affirmed.

The rule to ſhew Cauſe had been obtained in Eaſter Term laſt.

The Caſe ſtated by the Seſſions, on the Appeal, was as follows——

That it appears to them, that *Peter White* the *Father of the Pauper*, being *ſettled in Over Norton*, in the Year 1726, for the Conſideration of 29*l.* *purchaſed a Tenement in the Pariſh of Salford*, of one *John Lardener*, whoſe *Wife* was ſeiſed of the Inheritance in Fee Simple of the ſaid Tenement, but *never joined* with her Huſband in conveying it, nor had *Lardener* her Huſband any Eſtate in the ſaid Tenement *but in Right of his ſaid Wife*; and his ſaid Wife ſurvived him, and died about ten Years after him. *Lardener*, the Huſband, died thirty Years ago: [This Order of Seſſions was made in *November* 1762.] And *Peter White*, the Pauper's Father, has *lived in and poſſeſſed uninterruptedly* the ſaid Tenement *ever ſince he ſo purchaſed it*, and *ſtill lives there*: And his Son, the Pauper, was *born there*, in or about the Year 1730, and lived with his Father as Part of his Family in the ſaid purchaſed Tenement *till within theſe eight Years*; when the ſaid Pauper married, and *left his Father's* Family, and lived in a ſeparate Tenement in *Salford* aforeſaid, but *never gained* any Settlement *but what he derived from his ſaid Father*. It

is

is therefore Ordered by the Court [of Seſſions] that the Order made by the ſaid two Juſtices of the Peace be and is hereby diſcharged.

SALFORD and OVER NORTON.

NOTE—By 9 G. 1. c. 7. ſect. 5. "*No* Perſon or Perſons "ſhall be deemed adjudged or taken to *acquire or gain* "*any Settlement* in any Pariſh or Place, for or by Virtue "of *any Purchaſe* of any Eſtate or Intereſt in ſuch Pariſh or "Place, whereof the Conſideration for ſuch Purchaſe *doth* "*not amount to the Sum of thirty Pounds bonâ fide* paid, "FOR ANY LONGER OR FURTHER TIME *than ſuch Perſon* "*or Perſons ſhall* INHABIT *in ſuch Eſtate*; and ſhall "THEN *be liable to be removed* to ſuch Pariſh or Place "where ſuch Perſon or Perſons were laſt legally ſettled "before the ſaid Purchaſe and Inhabitancy therein."

Mr. *Morton* argued on Behalf of the Hamlet of *Over Norton*, That this is a *derivative* Settlement in the Son; and he muſt be ſent to that Place which was the Place of his Father's Settlement at the *Time of the Son's Removal*. To prove this, he cited 1 Sir *John Strange* 580. between the Pariſhes of *St. Giles* in *Reading* and *Everſley Blackwater* in *Berks*. The ſame Point was determined in the Caſe of *Cumner* and *Milton* *.

* 2 *Salk.* 528. 6 *Mod.* 87.

The Father's Settlement depends on the Words of 9 G. 1. c. 7. ſect. 5. "That the Purchaſer ſhall not gain a Settlement for *any lon-* "*ger* Time than he ſhall inhabit in ſuch Eſtate."

Before this Statute, *any* Purchaſe would have made a Settlement.

And *this* is a Settlement to the Father, *whilſt he inhabits on the Eſtate:* And the Son's *derivative* Settlement muſt be the *ſame* Place; as his Father was irremovable from it, at the Time when he was born.

Mr. *Blackſtone*, on the ſame Side, in Support of the Order of Seſſions—

The two Juſtices did Wrong: The Pauper was *not* removable to *Over Norton*.

The Father's Settlement at *Over Norton* may indeed *poſſibly revive*, if he *quits* his Eſtate at *Salford:* But *non conſtat* that he *ever will* quit it; and *Salford* is his *preſent* Settlement. He *can not* have *two at once:* Nor can he be *removed from his own* againſt his Will; though he may *voluntarily* quit it, and *then* become removable to his former Settlement at *Over Norton*.

SALFORD *and* OVER NORTON.

The *Son* could have no Settlement at *Over Norton:* For the Father never had any there *ſince* the Son was *born*.

In the Caſe of Certificate-Perſons, there is an *expreſs Prohibition* againſt *Certificate*-Perſons gaining any Settlement: But the preſent Caſe is *not* ſo.

As to any Hardſhip upon *Salford*——The Statute has *directed* it to be thus: And the grievance is left upon the *ſame* Foot as the Statute found it.

The Statutes ſhall be conſtrued *ſtrictly*, when they *narrow* Settlements; but *liberally*, when they *extend* them.

Mr. *Carter*, on the ſame Side.

The Father's Settlement in *Over Norton* is, at leaſt, *ſuſpended:* And he was ſettled in *Salford*, before the *Birth* of the Son.

Mr. Solicitor General (*Norton*) *contra*, argued againſt the Seſſions-Order, and for the Order of the two Juſtices, which removed the Paupers from *Salford*.

The Father is *ſettled* at *Over Norton:* He *only inhabits* at *Salford*.

If the Son leaves the Father and gains no Settlement for himſelf, he muſt be ſent to the Place which was the Father's Settlement at the Time when the Son *left* him. *Rex* v. *Inhabitants of Widworthy* *.

* *Vide ante*, No. 34. pa. 109.

The Act of 9 *G.* 1. *c.* 30. *ſect.* 5. does *not* give the Purchaſer any *Settlement* at all, but *only a perſonal Privilege* "to be irremovable "*ſo long as he reſides upon the very Spot* that he has purchaſed."

This Son has been *emancipated* eight Years. But *though* his Father's Settlement at *Over Norton* be *ſuſpended*, yet the Father *himſelf* is liable to be removed thither as ſoon as he *leaves* the Spot he has purchaſed: So that *he himſelf* has *no Settlement* at *Salford*; and therefore he could *give none* to his *Son* there.

It would be hard to *conclude Salford* by a *Judgment* "That the "Pauper is ſettled there:" Which the confirming this Order of Seſſions would do.

The Father came in *under Colour of a Title*, and *not by Diſſeiſin:* This appears clearly upon the State of the Caſe.

The Gentlemen agree "that the Father has no *permanent* Settle-"ment at *Salford:*" How then can he *communicate* a Settlement there to his Son? That which he had at *Over Norton* is ONLY *ſuſpended: It is his Settlement*, notwithſtanding his Purchaſe in *Salford* and his Reſidence upon it.

THE

SALFORD and OVER NORTON.

THE COURT took Time to adviſe. And

Lord MANSFIELD took this Occaſion of obſerving upon the Inſufficiency of the preſent Syſtem of the Poor Laws. Here is an Inſtance where the Parties have been at much more Expence than the *Keeping* of the Paupers would amount to: They have been before the two Juſtices; then at the Seſſions; then before this Court, after a Removal of the Orders by *Certiorari*; and here are three Counſel on one Side: And all this, in a Caſe where *Salford* have had the Labour of the Father for 36 Years, and of the Son from his Birth till he became unable to labour.

THE COURT having conſidered the Caſe,

Lord MANSFIELD now delivered their Reſolution; after firſt ſtating the *Caſe*, and then the *Statute* of 9 *G.* 1. *c.* 7. *ſect.* 5. and laſtly the *Queſtion*, *viz.* "Whether the Paupers *Peter White* the "Younger and *Mary* his Wife ought to have remained in the Pa- "riſh of *Salford*, or have been removed from thence to the Ham- "let of *Over Norton*, as their laſt legal Settlement."

WE are of Opinion that *no Settlement* of the *Father* was gained in *Salford* by the *Purchaſe*, but ONLY *during the Time of his inhabiting* the purchaſed Premiſes. And this would have been equally the Caſe, if this Act had never been made: For he could not have been removed from his own Eſtate, *though* he had *no Settlement* in the Pariſh where it lay. So that the *Father*'s Settlement (if it may be ſo called) in *Salford*, was *only* TEMPORARY, and DID NOT EXTINGUISH his Settlement at *Over Norton*. And the *only* Settlement which the Son could *derive from his Father* was at *Over Norton*: For there could be *no* derivative Settlement from the Father at *Salford*; the Father *himſelf* having *no Settlement there*, but being *only irremovable from his own Eſtate*; like the Caſe between the Pariſhes of *Wookey* and *Hinton Blewet*, in 1 Sir *J. S.* 476; where the Pauper, being ſettled at *Hinton Blewet*, had an Eſtate deſcended to him in *Wookey*; *by which* the Court held that he *gained no Settlement in Wookey*, though he *could not be removed from thence* if he ſhould *chooſe* to go thither.

It may be objected, "that the *Father's Settlement at Salford*, "though *temporary only*, might yet be communicated to the Son "*ſo long as the Father continued* upon his new-purchaſed Eſtate, "which *might* remain during his Life."

But the Anſwer to this is, That the Father had, in *Truth*, *no* SETTLEMENT *at all* at *Salford*, to communicate to his Son; but was

SALFORD and OVER NORTON.

barely irremovable from thence, in the ſame Manner as if the Act of 9 G. 1. had never been made.

This may be illuſtrated by a Suppoſition that the Son had not reſided in *Salford*, but had gone to live in a *third* Pariſh, and had *there* been likely to become chargeable; and the Queſtion had ariſen "Whether he ought to be removed to *Salford*, or to *Over Norton*." He could not poſſibly, in *ſuch* Caſe, have been removed to *Salford*; becauſe ſuch Removal would have been *concluſive upon Salford*, and he would *remain ſettled there for ever*: Conſequently, he muſt have been removed to *Over Norton*. Which ſhews that he can have acquired no Settlement in *Salford* by Virtue of his Father's Purchaſe, *even during* the Time of his Father's Reſidence upon it.

Per Cur.——

ORDER *of* SESSIONS *quaſhed:*
ORDER *of two Juſtices affirmed.*

No. 167. Rex *v.* Inhabitants of Winterbourn.

Monday 6th *Feb.* 1764,

Executing the Office of *Conſtable*, as DEPUTY, without being preſented at the *Court-Leet*, will not gain a Settlement.
1 *Blac. Rep.* 452. S. C.

UPON ſhewing Cauſe why an Order of Seſſions quaſhing an original Order of two Juſtices made for removing *William Merrick*, with *Mary*, *William*, *John*, *Anne*, *Betty*, *Hannah*, *Ruth*, and *Heſter*, his Children, from the Pariſh of *Winterbourn* to the Pariſh of *St. Philip and Jacob* (both in the County of *Glouceſter*) ſhould not be quaſhed; and why the original Order ſhould not be affirmed; the Caſe, as ſtated upon the Order of Seſſions, appeared to be, That *William Merrick*, the Pauper, about thirteen Years before the making the Order, took a Houſe in the Pariſh of *St. Philip and Jacob*, for one Year, at the Rent of 12 *l.* by the Year; and dwelt in the ſaid Houſe for Half a Year, and paid the Half Year's Rent. That at a Court-Leet of the Lords of the Manor of *Winterbourn* and *Hambrook* in the ſaid County of *Glouceſter* holden on the 13th Day of *October* 1761, *Richard Bayly* Eſq; was preſented by the Leet-Jury to be Conſtable for the Year enſuing, for the Tithing of *Hambrook* in the ſaid Pariſh of *Winterbourn*, in Reſpect of his Eſtate in the ſaid Tithing; but was never ſworn into or took upon him the ſaid Office. That the ſaid *Richard Bayly*, having Notice of the ſaid Appointment, *procured the Pauper to ſerve the ſaid Office of Conſtable*,

ble, IN HIS STEAD, IN ORDER *to gain the Pauper a Settlement at Winterbourn.* That the *Pauper was accordingly* SWORN *into the ſaid Office*, before a Juſtice of Peace of and for the ſaid County, and *ſerved the ſame Office for the whole Year*; during which Time, he lived in the ſaid Tithing of *Hambrook*; *but never was preſented thereto at any Court-Leet, as Conſtable in his* OWN *Right.* That the *Cuſtom* has been, Time out of Mind, to PRESENT *all Conſtables to ſerve for the ſaid Tithing*, at the ſaid Manor *Court-Leet.*

By 3 & 4 *W.* & *M. c.* 11. *ſect.* 6. " If any Perſon who ſhall " come to inhabit in any Town or Pariſh, ſhall, FOR HIMSELF *and* " *on his* OWN ACCOUNT, execute any public annual Office or Charge " in the ſaid Town or Pariſh, during one whole Year, he ſhall have " a legal Settlement in the ſame, though no ſuch Notice in Writing " be delivered and publiſhed as the Act before required."

Mr. *Selwyn* and Sir *Fletcher Norton* had obtained the Rule in *Michaelmas* Term laſt.

Mr. *Morton* and Mr. *Vernon*, on Behalf of the Pariſh of *St. Philip and Jacob*, and in Support of the Order of Seſſions, inſiſted that though the Pauper acted as Subſtitute for Mr. *Bayly*, yet as Mr. *Bayly was never ſworn in* to the Office, but the *Pauper was*, he therefore ſerved the Office in his *own Right*, or at leaſt for himſelf and *upon his own Account*: And it is not at all like ſerving the Office as *Deputy* only to another; which was the Caſe in Contemplation of the Legiſlature.

But *per* CUR.——The Caſe expreſsly ſtates " That he *ne-* " *ver was preſented* to the Office at any Court-Leet, as Conſtable " in his *own* Right: And that the Cuſtom requires *All* Conſtables to " ſerve for the ſaid Tithing to be ſo preſented."

Therefore (without hearing the other Side,)

ORDER *of Seſſions* DISCHARGED: And *The Original* ORDER AFFIRMED.

Vide poſt, No. 196. *Vin. Abr. Vol.* 19 p. 379. S. P.

Eaſter

Eaſter Term

4 Geo. 3. 1764.

No. 168.

Rex *v.* Inhabitants of Openſhaw.

Monday 28th *May* 1764.

A Tenant may gain a Settlement by being *rated to and paying the Poor Ley, &c.* although paid for, and repaid by his Landlord. 1 *Blac. Rep.* 463, S. C.

TWO Juſtices made an Order for the Removal of *James Bowden*, *Martha* his Wife, and *James*, *Sarah*, *Samuel*, *William* and *Mary* their Children, from *Gorton* in *Lancaſhire* to *Openſhaw* in the ſame County: And the Seſſions, upon an Appeal, confirmed that Order.

Upon *Friday* the 11th of this Month, Mr. *Kenyon* moved to quaſh theſe Orders: And a Rule was made to ſhew Cauſe.

The CASE ſtated upon the Order of Seſſions was——That the Pauper *James Bowden*, with his Family, being legally ſettled in *Openſhaw*, took a Houſe and two Crofts in *Gorton*, in 1758, from one *Joſhua Oldham*, at the Rent of 3*l.* 10*s:* And the LANDLORD *was to pay all Leys and Taxes* except the Window-Tax: which was to be paid by the Tenant. And accordingly he went with his Family to reſide upon, and occupied the Tenement aforeſaid until *May*-day 1762: During all which Time, except as hereafter mentioned, *Joſhua Oldham the* LANDLORD *paid all Leys and Taxes.* But in the *laſt Year*, *Oldham* having ſome Diſputes with the Overſeers concerning his Leys for his other Eſtates in *Gorton*, directed the Overſeer *to call upon his Tenant Bowden for a Quarter of a Year's Poor-Ley and a Church-Ley*, and tell him "that he his *Landlord ordered him to pay it*, and "he would allow it out of his Rent." Whereupon the Overſeer accordingly *aſked Bowden for a Poor's Ley* (being one Shilling) *and a Church-Ley* (being one Shilling and two Pence Halfpenny,) telling him what his Landlord had ſaid; and he *paid* them both, (amounting to two Shillings and two Pence Halfpenny,) *declaring* "he paid "them FOR *his Landlord*;" and the Overſeer ſaid "He *accepted* "*them accordingly:*" But the Landlord, not being aſked by the Tenant to allow it, did *not allow it* out of the Rent, TILL *long after he left the Eſtate, viz.* 6th of *February* 1763, (ſix Days before the

the granting of the Order for the Removal of the Pauper and his Family from *Gorton* to *Openſhaw*,) *when* he REPAID the Money. The Rate or Aſſeſſment for the Relief of the Poor of *Gorton* was ſigned and allowed by three of the principal Inhabitants; but was not ſigned by the Overſeers, or allowed by the Juſtices, or publiſhed in the Church: But it was the Rate by which the Officer collected the Poor-Ley; and no other was made or gathered by, but in that Method, during all the ſaid Years. The Church-Ley was likewiſe ſtiled to be a Church-Ley upon the *Land-Owners*; but was not ſigned by any of the Inhabitants. And in both theſe Aſſeſſments, the Charge in Reſpect of this Tenement was as follows, *viz.* "BOWDEN's;" as appeared by the Aſſeſſments, which appeared to be marked with a Croſs, to denote the Payment of the Sums charged in the Manner ſet forth in thoſe Aſſeſſments. And that the Pauper's Name is *Bowden*, not *Bowden's*.

Mr. *Clayton* now ſhewed Cauſe. He argued, in Support of the Orders, and on Behalf of the Townſhip of *Gorton*; and endeavoured to ſhew that the Settlement of the Paupers was *not* in *Gorton*. He obſerved that there was not BOTH *a Rating* AND *a Paying* of theſe Taxes there, upon and by this *James Bowden*: Whereas it is abſolutely requiſite, in order to his gaining a Settlement there, that he ſhould be both *rated* and *pay*. Here, he was neither rated nor paid in his *own* Right; but *for* his Landlord: And the Overſeer *accepted* the Payment as FOR *his Landlord*, who had agreed to pay it, and afterwards *repaid* it to *Bowden*.

He cited the Caſe of *Uffculme* *, *P. & Tr.* 1757, 30 *G.* 2. *B. R.* and *Rex* v. *Inhabitants of Painſwick* †, *Tr.* 1758, 31 *G.* 2. *B. R.*

This is not like the Caſe of the Cuſtomhouſe-Officer § who had paid it in his *own* Right, but was repaid by the Collector: For this Man did *not* pay it in his own Right, but profeſſedly *for* another Perſon; and it was *ſo received*.

Lord MANSFIELD (without hearing the Counſel for the Townſhip of *Openſhaw*,) ſaid it was a *clear* Caſe; though perhaps *not ſo ſtrong* as ſome other may have been.

This was the proper Tax upon the *Tenant*: And he is aſſeſſed by Name, "*Bowden's*." The Agreement between his Landlord and him, "that the Landlord ſhould pay it," is nothing to the Pariſh ‖.

BOTH ORDERS QUASHED.

* *V. ante*, No. 138. † *V. ante*, No. 148. § *V. ante*, No. 3. and No. 22. ‖ *V. ante*, pa. 6. and the ſeveral Caſes there referred to. *Peſſ.* No. 200, 2 *Burr. Rep.* 1062. *Doug.* 543, 599. *accord.*

Rex

No. 169. Rex *v.* Inhabitants of Leeds.

Saturday 2d June 1764.

A *Wife* and *Children* cannot be removed from a *Tenement* of 10*l.* a Year, rented by the *Husband*, as being *likely* to become chargeable. 1 *Blac. Rep.* 466, S. C.

UPON Complaint made to two Juſtices of Peace for the County of *Leiceſter*, by the Churchwardens and Overſeers of *Blackfordby* in the Pariſh of *Aſhby de la Zouch* in the ſaid County of *Leiceſter*, "That *Anne Howe*, Wife of *Joſeph Howe*, by Trade or "Profeſſion a Coachmaker, (who hath lately deſerted her,) and her "two Children, to wit, *Elizabeth* aged about two Years, and *Mary* "aged about ten Weeks, have lately intruded themſelves into the "ſaid Town of *Blackfordby*, there to inhabit as Pariſhioners, con-"trary to the Laws relating to the Settlement of the Poor; and "are there likely to become chargeable if not timely prevented;" the two Juſtices, upon the 25th of *June* 1763, removed them from *Blackfordby* to *Leeds* in *Yorkſhire*, as their laſt legal Settlement: Which Order coming before the Seſſions upon the 4th of *October* 1763, on an Appeal made by the Pariſh of *Leeds*, they ſtate the following Caſe——

Joſeph Howe, Huſband of the ſaid *Anne Howe*, in *June* 1761, *took a Tenement of* 10*l. per Annum at Blackfordby*, and was to leave it at *Michaelmas* or *Lady-day*; but no mention was made, *what Michaelmas* or *Lady-day* he was to leave it. At *Michaelmas* 1761, *Howe* and his Wife went to *Blackfordby*, and *reſided upon the ſaid Tenement* till about the *Chriſtmas* following: From which Time till the Month of May 1762, HE was *ſometimes at Leeds* and *ſometimes at Blackfordby*: but his WIFE AND FAMILY *reſided* WHOLLY *at Blackfordby*, and *never were at Leeds* before the Removal. In *May* 1762, he took, for a Year, one Tenement at the annual Rent of 15*l.* and another of 5*l.* both at *Leeds*; where he followed the Trade of a Coachmaker, and occupied them till ſome Time in the Month of *June* 1763. From the Time of his taking the ſaid Tenement at *Leeds*, to *November* 1762, *he* reſided *chiefly at Leeds*, but was in the mean Time *twice with his Wife at Blackfordby*; *whom he* LEFT *in the Tenement he took* THERE. From *November* 1762, *he* reſided *conſtantly* at *Leeds*, till about the 15th of *April* 1763. His *Wife and Family* becoming chargeable to the Town of *Blackfordby*, the Pariſh-Officers of *Blackfordby* obtained a Warrant from a Juſtice of Peace to apprehend him on that Account, and brought him into the County of *Leiceſter* aforeſaid; when he made them Satisfaction

and

and promiſed " to take his Wife away from *Blackfordby*, and pre-" vent their being at any further Expence." But ſhe being at her Time, the ſaid *Joſeph Howe and his Wife ſtaved in the ſaid Tenement at Blackfordby twenty-ſeven Days*, whilſt ſhe lay-in, to wit, from the 18th Day of *April* 1763, to the 15th of *May* following; when he took his Wife to and left her at her Brother's in *Worceſterſhire*, and *returned to Blackfordby, and locked up the Doors of his Houſe there*, and left the Key with a Neighbour, and gave him *Directions to get the Hay* FOR HIM *off the Tenement there* which he took as aforeſaid; and in a few Days, and WITHOUT EVER HAVING RESIDED either IN *the ſaid Tenement* at *Blackfordby* or *in the Pariſh* of *Blackfordby after* the taking his Wife as aforeſaid to her Brother's, *went to Hunſlet*, a Hamlet in the Pariſh of *Leeds* which maintains it's own Poor, *and continued there ever ſince*. The Hay was accordingly got *for him*, and ſtill remains upon the Premiſſes, and is his Property. About a Fortnight ſince, he wrote a Letter to the Perſon with whom he had left the ſaid Key, " to deliver the " Poſſeſſion of the ſaid Tenement at *Blackfordby* to the Landlord:" But poſſeſſion was not delivered. On the Day before the Appeal, he received the Key from the ſaid Perſon, and had it in his Poſſeſſion at the Time of the Appeal. *His Wife having afterwards returned to Blackfordby* and wanting Relief, they removed her, by Order, to LEEDS, as the Place of her Settlement. The Court of Seſſions is of Opinion " that *Leeds* is the Place of her and her Childrens Set-" tlement; as *Joſeph Howe* has *not* reſided *forty Days* upon his Te-" nement at *Blackfordby*, SINCE *he reſided upon his Tenement at* " *Leeds*; which he did from *November* 1762 to the ſaid 15th of " *April* 1763, as above ſtated:" And therefore they confirm the ſaid Warrant of the ſaid two Juſtices.

Theſe Orders being removed up hither by *Certiorari*, the only Queſtion turned upon the Settlement of this *Joſeph Howe*, the Huſband of *Anne* and Father of the Children; (for it was agreed " that " *their* Settlement muſt follow *his*," agreeably to the Caſe of *Everſley Blackwater* and *St. Giles's Reading*, in 1 Sir *J. S.* 580.) And as to *him*, the Queſtion was debated " Whether his laſt legal Settle-" ment was at *Leeds*, where he had reſided about *five Months con-" ſtantly* till 18th *April* 1763; or at *Blackfordby*, where he *after-" wards* reſided *only twenty-ſeven Days*, though upon a Tenement " of 10 *l. per Annum* then rented by him."

LEEDS *and* BLACKFORDBY.

Lord MANSFIELD, *Mr. Justice* WILMOT, and *Mr. Justice* YATES * were All of Opinion, that *Joseph Howe himself* could not have been removed from his own Tenement at *Blackfordby*, the Lease whereof was unexpired: And if they could not have removed the Man *himself* from his *own*, it follows consequently that they could not remove his *Wife and Children so long as it* REMAINED HIS. Indeed *if* his Lease at *Blackfordby* had been at an *End*, his last forty Days Residence at *Leeds* might have born a different Consideration: But the Justices have certainly been *premature* in removing them from *Blackfordby* WHILST *his Interest there* SUBSISTED, and from whence he himself would at that Time have been *irremovable*.

Mr. Justice DENISON was absent.

BOTH ORDERS QUASHED. †

† *Vide ante*, No. 131. *S. P.*

Trinity Term 4 Geo. 3. 1764.

No Determination of this Sort.

Michaelmas Term 5 Geo. 3. 1764.

Nor in this.

Hilary

Hilary Term

5 Geo. 3. 1765.

Rex *v.* Inhabitants of Spotland. No. 170.

Wednesday 6th *Feb.* 1765.

An *Apprentice* bound to a *Certificate-Man*, may gain a Settlement by *ſerving* him 40 Days, in a *third* Pariſh

TWO Juſtices made an Order for the Removal of *Anne Hamer*, Widow, and her five Children, (*viz. Betty*, aged 13. *Ellen*, 9. *Samuel*, 5. *Anne*, 3. and *Thomas* aged 1 Year,) from the Townſhip of *Caſtleton* in the County of *Lancaſter*, to the Townſhip of *Spotland* in the ſame County: And, upon an Appeal, the Seſſions confirmed that Order.

THE CASE ſtated on the Seſſions-Order was this—— *John Hamer*, when a Boy of about fourteen Years of Age, was legally bound an *Apprentice* by his Father, to one *Oldham*, of *Caſtleton*, a *certificated Perſon* from *Middleton* to *Caſtleton*; and ſerved his Maſter in *Caſtleton*, for ſome Years. Then the Apprentice *removed*, WITH *his Maſter*, into *Spotland*; WHERE *he ſerved him forty Days* and upward; and then was married to a young Woman whoſe Parents lived in *Caſtleton*: And till the Expiration of the Apprenticeſhip, which was upwards of Half a Year, the Apprentice, as ſuch, DAILY *worked* with his Maſter in *Spotland*; but went and LODGED *with his Wife*, at her Parent's Houſe at *Caſtleton*.

On *Thurſday* 18th *November* laſt, Mr. *Clayton* moved to quaſh theſe Orders: And a Rule was made to ſhew Cauſe.

Mr. *Morton* was now going to ſhew Cauſe why the Original Order and the Order of Seſſions confirming it ſhould not be quaſhed.

But it was thought proper, firſt to hear the Objections to them particularly ſtated.

Accordingly, Mr. *Clayton*, ſupported by Mr. Attorney General *, objected, that the Apprentice, by his LODGING with his Wife on Nights, at her Parent's Houſe at *Caſtleton* for the laſt Half Year of his Apprenticeſhip, *acquired a Settlement there*: For that it is the LODGING which makes the Settlement; and NOT the *Service*. To

* Sir *Fletcher Norton*. (He ſucceeded Mr. *Yorke* on the 16th of *Dec.* 1763.)

SPOTLAND *and* CASTLETON.

prove this, they cited the Case of the Coachman of *Chipping-Wycombe*, 1 *Strange* 528, and the Cobler's Case in 1 *Strange* 51 *, and the † Seafaring Apprentice's Case, in 1 *Strange* 60.

The *Certificate*, they said, was now out of the Case: For by his residing with his Master forty Days in *Spotland*, he had gained a Settlement ‡ *there*; as they did not reside in *Spotland* UNDER the Certificate. Consequently, he came *back from Spotland to Castleton*, FREE *from the Certificate*; just as if there had been *no Certificate at all*; as appears by the Case of *High and Low Bishopside* ‖, *Trin.* 28 *G.* 2: And by *lodging* there above forty Days, he gained a Settlement there, *subsequent* to that he had gained in *Spotland*.

‖ *V. ante*, No. 122, pa. 381.

The Case between the Parishes of *St. Mary Colechurch* and *Radcliffe*, in 1 *Strange* 60, (which was in the next Term to the Cobler's Case) has now settled it "That the Lodging makes the In-"habitancy." Therefore both these Orders ought to be quashed.

Mr. *Morton*, Mr. *Stowe*, and Mr. *Dunning*——on the other Side ——(for supporting the Order removing him to *Spotland* where he *worked* in the Day-time,) argued that it was more reasonable that the Apprentice should be settled in the Parish where he *worked*, than in that where he *slept* for his *own* Pleasure and Convenience, *not* for his *Master's*. And the *Radcliffe* Case is not inconsistent with this Notion: For there he *was* in his *Master's Service*, on Board the Ship by Night, to *guard* and take Care of it. But the Case of going to lie with his Wife, was on his *own* Account, *not* on his *Master's*.

But on the *Certificate*, it is *Decisive*. For this Certificate was still *subsisting*; and the Master's Removal to *Spotland* was *voluntary*, and *not* under any *Order* of Removal. The Master is not stated to have gained any Settlement in *Spotland*. In a Case between the Inhabitants of *Sowerby* and *Halifax*, two or three Years ago §, it was *determined* "that a *voluntary* Removal is *no* Determination of the "Certificate." So that the Master continued a Certificate-Man to *Castleton*: And the Apprentice was Part of his Family.

§ On 4th *Feb.* 1760.

* See it also in *Foley*, pa. 172; and in *Cases of Settlements*, pa. 82, No. 106; and in *Sessions Cases*, Ed. 1750, Vol. 1, pa. 115, No. 112.

† This Case is also in *Foley*, pa. 173; *Forteſcue* 306; and *Cases of Settlements*, pa. 81, No. 105.

‡ It was agreed, on both Sides, "that the Apprentice gained a Settlement in *Spotland*, by "serving and residing there forty Days."

** *V. ante*, pa. 408, No. 130. But it was determined on *another Point*, *viz.* the Indenture not being stampt: So that it is *no Authority*, as to *the present* Point. See the Note in pa. 410. 411.

Also see *ante*, No. 129, *Doug.* 402. *contra.*

Mr.

Spotland and Castleton.

Mr. *Clayton*, in Reply, urged that the Apprentice ought not to have been ſent to *Spotland*: Admitting that he had gained a Settlement there, and had *not* gained a ſubſequent one at *Caſtleton*. For the 12 *Ann. ſtat.* 1. *c.* 18. *ſect.* 2. directs "that every ſuch Apprentice ſhall have his Settlement in ſuch Pariſh Townſhip or Place AS IF *he had not been bound Apprentice.*"

His *Lodging* for Half a Year together in *Caſtleton* muſt be with the *Knowledge and Conſent* of his Maſter: It could not be otherwiſe.

The two Acts concerning Certificates are, firſt, 8 & 9 *W.* 3. *c.* 30. (with its Supplement of 9 & 10 *W.* 3. *c.* 11.) and, ſecondly, 12 *Ann. ſtat.* 1. *c.* 18. *ſect.* 2. relating to the Apprentices and Servants of certificated Perſons. Here, the Maſter did not reſide in *Spotland, under a Certificate.* Therefore the Apprentice is *clear of* the latter Act; which is *confined* to the Pariſh *to which* he is certificated, and wherein he reſides *under* the Certificate *.

* *V. ante*, No. 122, and No. 125.

The Maſter *might* have gone back to *Caſtleton* under the Certificate; but he *did not:* Therefore 'tis not like the Caſe of *Sowerby* and *Halifax.* [See the Remark upon that Caſe, a few Lines backward.]

Lord MANSFIELD—It is admitted "That the *Apprentice* "*gained a Settlement in Spotland.*"

My preſent Thoughts upon this Caſe are theſe——The *Maſter*, the Certificate-Man from *Middleton* to *Caſtleton*, gained *no* new Settlement in *Spotland:* And the Pauper *ſtill* remained an Apprentice to this Certificate-Man. The Maſter may ſtill go back to *Caſtleton*, the Pariſh *to which he was certificated.* Therefore I think, at preſent, that the Apprentice could *not* gain a Settlement in *Caſtleton.*

Mr. Juſtice WILMOT—It would have been incumbent on the Townſhip of *Caſtleton* to *ſhew*, if it had been diſputed, that the Pauper's Settlement is in *Spotland*; which might have had ſome Difficulty in it: But it is *admitted* "That he *did* gain a Settlement in "*Spotland* by ſerving and reſiding forty Days there."

The only remaining Queſtion then is, "Whether he gained a "Settlement in *Caſtleton by lying there* above forty *Nights*; though "he *worked* with his Maſter in *Spotland*, in the *Day*-time."

But it is now *ſettled* (I am ſpeaking *independently* of the Certificate,) "That wherever the Servant or Apprentice *lies*, he is *there* "ſettled †."

† *V. ſupra*, And *v. poſt.* No. 171, No. 183, No. 221,

As to *Certificated* Perſons—It has been indeed determined "that "if a Certificate-Perſon goes to *another* Pariſh, and becomes "chargeable to it, and is *by an Order* of Juſtices *removed* from "thence

SPOTLAND and CASTLETON.

" thence to the Parish which gave the Certificate, *then* the Certificate is *at an End*; it is *satisfied*; it is *functus Officio*; and it can have its Effect but *once*." *Rex* v. *Inhabitants of Sudbury* *. *Hil.* 28 *G.* 2.

* *V. ante*, No. 119, pa. 373.

But *here*, the Removal is *voluntary*; not by Force: The Certificate *subsists*; and the Apprentice remains Part of his Master's Family. He was so at *Spotland*, and all along *continued* to be so.

The Words and Meaning of the Act seem to be " that the Apprentice of a certificated Person should *not* gain a Settlement where the *Master himself* could gain *none*."

Lord MANSFIELD——I have been looking over the Certificate-Acts: And I see, they relate to the *particular* Parishes *to which* the Certificates are given.

Mr. *Dunning*——If the Gaining a Settlement in *Spotland*, by serving and residing there forty Days, had not been admitted; yet it would have been *true* " that he *did* gain one there;" And so it was determined in the Case between the Inhabitants of *Dymchurch* and *Petham* †, *M.* 14 *G.* 2. *B. R.*

† *V. ante*, No. 54. *pa.* 154. But *see post.* No. 198, pa. 640.

Mr. Attorney General *contra*——If that should be admitted, yet the Justices ought not to have sent him to *Spotland*, but to such Place where he was *settled* BEFORE *his Apprenticeship*, by 12 *Ann. c.* 18. *sect.* 2. which says " that he shall have his Settlement in " *such* Place as if he had *not been bound Apprentice*." For the Settlement in *Spotland* is gained *under* the Binding; and therefore could not be the Settlement which he had *before* the Binding.

Lord MANSFIELD——The Act says " That the Apprentice shall not gain any Settlement in *such* Parish (the Parish to which his Master came by Certificate,) by Reason of such Apprenticeship or Binding; but shall have his Settlement in such Parish as if he had not been bound Apprentice to such Certificate-Person." The former Expression is meant to *confine* it to the Parish where the Certificate-Man resided *under* the Certificate.

I think that as this Apprentice *had got an intermediate* Settlement, he ought to be sent to *that* Settlement which he had *intermediately* gained.

Mr. Justice WILMOT agreed to this. For if he was to be sent to his *former* Settlement, which he had *prior* to the Binding,

ing, THEY would ſend him to *Spotland*, as his *laſt* Place of legal Settlement. SPOTLAND and CASTLETON

Per. Cur. unanimouſly——

ROLE DISCHARGED: And BOTH ORDERS AFFIRMED.

MEMORANDUM.

ON the 14th of *February* 1765, SIR THOMAS DENISON, Second *Judge* of the Court of *King's Bench*, *reſigned* his Office and retired: And on *Friday* the 19th of *April* 1765, five Days before the following *Eaſter* Term,) RICHARD ASTON, *Eſq*; (Lord Chief Juſtice of the *Common Pleas* in *Ireland*) kiſſed Hands on being appointed to *ſucceed* him, and was *knighted*.

*Eaſter Term

5 Geo. 3. 1765.

* On *Thurſday*, 25th *April* 1765, SIR RICHARD ASTON took his Seat on the Bench, as Puiſné Judge of this Court.

Rex *v.* Inhabitants of Burton-Bradſtock. No. 171.

TWO Juſtices made an Order for the Removal of *James Capon* and *Chriſtian* his Wife from *Bothenhampton* in *Dorſetſhire* to *Burton-Bradſtock* in the ſame County: And the Seſſions, upon an Appeal, confirmed that Order.

Saturday 18th *May* 1764.

Reſidence and *Service* of an *Apprentice*, for 40 Days, ON BOARD A SHIP, *at its proper Home*, will gain a Settlement.

The Facts ſtated on the Seſſions- Order are theſe—*James Capon* being ſettled at *Beamiſter* in the County of *Dorſet*, was by an Indenture

BURTON BRADSTOCK and BOTHENHAMPTON.

denture bearing Date the 28th Day of *March* 1754, bound *Apprentice* to *John Miller* of *Bridport* in the County of *Dorset*, then OWNER OF A SHIP (called *The John and Samuel*,) to serve him as an Apprentice, and *to learn Navigation and the Art of a Sailor*, for the Term of seven Years: And the said *James Capon* did, immediately after the executing the said Indenture, *enter on Board* the said Ship, and did THERE *serve* the said *John Miller* for the said Term, as such Apprentice.

The said Ship, during all the Time of the said Apprenticeship, was employed in a *Coasting-Trade* from a Place called *Bridport-Harbour* in the said County of *Dorset* to many other Ports: And during all that Time, the said Harbour *was*, and was considered by the Captain and Sailors of the Ship *as* THE PROPER HOME *of the Ship*, and where she returned at the End of every Voyage, and always took her Departure from thence in the several Voyages that she made.

During the said Time, the said Ship was many Times in *Bridport-Harbour*; sometimes, for a Fortnight; sometimes a Month; and sometimes, two Months, at a time; but never in any other Port, Harbour or Place for more than a Month at a Time.

On the 7th Day of *December* 1760, the said Ship arrived in the said Harbour called *Bridport-Harbour*, and *continued there* till the 22d of *January* 1761, being *more than forty Days*; during which Time, the said *James Capon* RESIDED LODGED *and* SERVED *Miller* his Master, *as* his Apprentice, ON BOARD *the said Ship*, and *to take Care* thereof and of his Master's Goods therein; it being his Business, as *Miller's* Apprentice, to take Care of and secure the Goods on Board the said Ship, and to prevent their being stolen or imbezzled.

And the said Ship was *never* in any *other* Place or Port, forty Days, *after* that Time.

On the 11th Day of *March* 1761, the said Ship again returned to *Bridport-Harbour*, and stayed there till after the 28th Day of the same Month; on which Day the said Apprenticeship expired: And during that Time the said *James Capon resided lodged* and *served Miller*, as his Apprentice, *on Board the said Ship*, to take Care thereof and of the Goods therein.

BRIDPORT-HARBOUR is a BASON *within* the said Parish of *Burton-Bradstock*; which, about twenty Years ago, in Pursuance of an Act of Parliament made in the 11th Year of his late Majesty King *George*

George the Second, was *dug and made* on a Piece of *Land lying* WITHIN *the ſaid Pariſh of Burton-Bradſtock*, and Part of the Manor of *Burton-Bradſtock*, and which then belonged to Mr. *George Pitt*, (of whom the ſaid Piece of Land was purchaſed:) And at the Time when the ſaid Baſon was made, a CUT was alſo made through the Land which then lay between the ſaid Place where the Baſon was made, and the Sea, to let the Sea up to the Baſon; *through* which Cut, *Ships ſail into the ſaid Baſon.* BURTON BRADSTOCK *and* BOTHENHAMPTON.

Since the Expiration of the ſaid Apprenticeſhip, the ſaid *James Capon* married *Chriſtian* his preſent Wife; and has gained no Settlement, ſave as aforeſaid.

Upon the Conſideration of theſe Facts, and hearing Counſel on both Sides, it is adjudged by the Court of Seſſions, "that the ſaid "*James Capon* is ſettled in the Pariſh of *Burton-Bradſtock:*" And therefore they confirmed the Order of Removal.

A Motion had been made by Mr. Serjeant *Burland*, on the ſecond Day of this Term, to quaſh theſe Orders: And a

RULE *was made to ſhew Cauſe.*

Upon ſhewing Cauſe now, Mr. *Thurlow*, Mr. *Dunning*, and Mr. *Manſfield*, in Support of the Orders, argued that the Pauper was laſt legally ſettled in *Burton-Bradſtock.*

This Caſe depends, they ſaid, upon the Statute of 13 & 14 *C.* 2. *c.* 12. "for the better Relief of the Poor of this Kingdom." And it is reaſonable that this Pariſh ſhould relieve the preſent Pauper, as they received the Benefit of his Labour. 'Tis the Continuance in a Pariſh for forty Days that makes the Settlement: And this Man *reſided* lodged and ſerved in this Pariſh above forty Days.*

* *Vide ante*, No. 170, *poſt.* Nos 183, 221.

Twenty-five Years ago, this Baſon was *not* covered with Water; it was *then Terra firma:* Therefore a Settlement might *then*, at leaſt, have been gained by ſuch a Reſidence. It was the only Reſidence ſuch an Apprentice was capable of: For it is ſtated to have been the *Ship's proper Home.* It was a *floating Houſe*, and no otherwiſe diſtinguiſhable from ordinary Caſes, than that this was *Terra aquâ cooperta:* But its being upon Water (either freſh or ſalt,) or being upon dry Land, makes no Difference in the Settlement.

The Apprenticeſhip was *performed* in this Harbour: And he was *irremovable* from it. It is *not* a *Paſſage*-Reſidence, or mere caſual Habitation: It was the *Home*-Port of the Ship; and no Settlement

BURTON BRADSTOCK and BOTHENHAMPTON.

is or can be claimed elsewhere: And therefore Cases of *accidental* Residence are not applicable to the present Case. But they cited the Case of the Seafaring * Apprentice, between the Inhabitants of *Radcliffe* and *St. Mary Colechurch*, 1 *Strange* 60, as applicable to the Case now in Question: And they took Notice that the Case of *Alton* and *Elvetham* † was relied on at the Sessions. They observed, in general, that in Cases of this Kind the Determinations have been always favourable to Settlements; and that they have been considered as Privileges and Benefits.

* *V. ante*, No. 170, S. C. cited and discussed.

† *V. ante*, No 134.

Mr. Serjeant *Burland*, Sir *Fletcher Norton*, and Mr. *Meseres*, *contra*, (for the Parish of *Burton-Bradstock*,) endeavoured to support the Rule for quashing the Orders.

The three Statutes on this Subject are 13 & 14 *C.* 2. *c.* 12. 1 *Jac.* 2. *c.* 17. *sect.* 3. and 3 & 4 *W.* & *M.* *c.* 11. *sect.* 8. which enacts that "Apprentices bound by Indenture, and inhabiting &c. "shall gain Settlements without Notice." But all these Statutes must be taken together, and construed alike and consistently.

On the true Construction of the first of these Statutes, 'tis plain that it was never intended that such an Apprentice, bound to a Master who was a Seaman, and where the Service was to be *done* AT SEA, or *on Board a Ship*, should be included in it. The Objects of that Law are *Land*-men. How could the Churchwardens take Notice of or remove such Persons as were on Ship-board? This is a *new* Jurisdiction given to Justices of Peace, to *infringe the natural Rights* of the People: For at *Common* Law, *every* Person was *irremovable* from the Place where he was resident.

Therefore the Words "*coming to settle in a* TENEMENT under "10*l.* a Year," could never mean such a *Water*-Settlement as this: The Legislature, who enacted these Statutes concerning *Parish*-Settlements, could have no such Thing as this in their Contemplation; neither is the Notion supported by any Determination made upon them.

The Parish of *Burton-Bradstock* had no Benefit from such a Sort of Residence as this. If any Parish received a Benefit, it must be the Parish of *Bridport*, *where the Master lived.*

The Case of *St. Mary Colechurch* and *Radcliffe*, in 1 *Strange* 60. and of *Alton* § and *Elvetham*, were determined on *public* Principles.

§ V. *ante*, No. 134.

A Ship is, in its *Nature*, transitory and locomotive: It cannot be considered as having *any* Home. Consequently, a Sailor can never be considered as a *permanent* Resident: The Course of their Profession

BURTON-BRADSTOCK and BOTHEN-HAMPTON.

ſeſſion is quite the Reverſe: Their Reſidence in a Harbour muſt, in its very Nature, be caſual, accidental, and temporary.

Greenland-Dock, where the *Greenland*-Ships lie all the Winter-Seaſon, is in the Pariſh of *Rotherhithe*; and a Ship-keeper lies in every Ship: Yet no Settlement is ever pretended to be gained thereby. Nor has it ever been imagined that Apprentices to Mariners gain Settlements in the Pariſhes below Bridge, by lying on Board of Ships moored within them.

BRIDPORT is a *large Port*: This *Harbour* is cut out of the *ſmall* Pariſh of *Burton-Bradſtock*. It would be very hard and unjuſt upon this little Pariſh, if they ſhould be bound to keep *all* the Sailors that ſerve on Board the Ships lying in this Baſon, and bear the Burthen of all the Poor that come to *Bridport*. *Seafaring* Men can never be conſidered as having a *permanent* Reſidence. The Courſe of their *Profeſſion* is quite the *Reverſe* of this: And their Stay in a *Harbour* muſt, in its very Nature, be caſual, accidental, and temporary.

The *old* Settlement therefore of this Apprentice *continues*; as he has *never* gained a *new* One.

Lord MANSFIELD—There do not appear to be any former Determinations on this Subject. Therefore, as we ſhall gain nothing by looking for them, we may as well make an End of the Matter *now*.

Lying in a Pariſh is the ſame, whether it be on Board a *Ship*, or on *Land*.

Caſual Reſidences, or *accidental* Inhabitancies, are out of the preſent Caſe. This Harbour or Baſon is ſtated to be the proper HOME of the Ship; and to be *within the Pariſh* of *Burton-Bradſtock*: And the Service was, *bonâ fide*, without any Pretence of Colluſion, *performed in that Pariſh*.

Therefore there ſeems to be *no material Difference* between *this* Caſe and the *ordinary* Caſes of gaining Settlements in Pariſhes by Apprenticeſhip.

Mr. Juſtice WILMOT ſaid he ſaw the Inconvenience that it had been hinted might happen to this little Pariſh of *Burton-Bradſtock*, to the Advantage of the Town of *Bridport*. But, that Inconvenience cannot alter the *Law*: The Acts of Parliament muſt be *purſued* in what they have *expreſsly directed*: though a particular Pariſh may be incommoded.

Settlements are *ſuppoſed in Law* to be *indifferent* to Paupers; though they are often, *in Fact*, deſirous of one, in *Preference* to another.

BURTON-BRADSTOCK and BOTHEN-HAMPTON.

These Laws must be construed according to the *Intention* of them: And the Circumstances of Things at the *Time of enacting them* ought to be taken into Consideration.

Now *before* these Acts, *no* Person could be removed from his or her Residence; though it had been of ever so *short* a Date.

Then *a Residence for forty Days* was fixed upon as requisite to establish a Settlement.

The first Section of 13 & 14 *C.* 2. *c.* 12. gives Power to the two Justices, upon Complaint made by the Churchwardens or Overseers to any Justice of Peace, *within* forty days after any Poor Person's coming to settle in any Tenement under the yearly Value of 10 *l.* by Warrant to remove them. This Clause excepts only persons *renting such Tenements:* Other Persons were removable, upon Complaint made within forty Days, unless they should give Security for the Discharge of the Parish. But *whither* were they to be removed? They were to be removed "to such Parish or Place where they had "been last legally settled, either as Natives, Householders, Sojourners, Apprentices or Servants, *for the Space of forty Days.*"

Then the 1 *J.* 1. *c.* 17. *sect.* 3. directs "that the *forty Days* "Continuance intended by 13 & 14 *C.* 2. to make a Settlement, "shall be *accounted* from the Time of DELIVERY of a *Notice in* "*Writing*, &c."

Then the 3 & 4 *W.* & *M. c.* 11. *sect.* 3. directs "that the forty Days shall be *accounted* from the PUBLICATION of such Notice in Writing so delivered:" And the 8th Section enacts "that "if any Person shall be bound an Apprentice by Indenture, and "*inhabit in any Town or Parish*, such Binding and Inhabitation shall "be adjudged a good Settlement, though *no* such Notice in Writing "be delivered and published."

So that an Apprentice by Indenture, *inhabiting in a Parish*, gains a Settlement therein.

Now here the Harbour is stated to be "the *proper* HOME *of the* "*Ship*, and considered as such:" And it is expressly stated to be "*within* the Parish of *Burton-Bradstock*." Therefore *this* Case is within the *common* Case, as it appears to me.

If the Apprentice had lain in a HOUSE *at Land* within this Parish, it had been no Question: The Apprentice had *then* been undoubtedly settled there; though the Master had lived in another Parish. And here *Burton-Bradstock* had as much *Benefit* from the Apprentice's Labour, as if he had lain there by Night in a *Cott upon Land*. Therefore the Apprentice's Settlement is clearly in *Burton-Bradstock*.

We

We muſt take the Law as we *find* it: We *can not* alter it, from any apprehended Inconvenience to a particular Pariſh.

Mr. Juſtice YATES concurred that the Settlement was in *Burton-Bradſtock*: And he ſaid that the Act of 13 & 14 *C.* 2. *c.* 12. does not apply to the preſent Caſe; nor do the Caſes about *caſual* Reſidence.

This is nothing like ſtrolling as a Vagabond from Pariſh to Pariſh. This Place was the proper *Home* of the Ship: It is *not* a *caſual* Reſidence or an *accidental* Inhabiting. It is expreſsly ſtated "that this "*Harbour* was and was conſidered as *the* PROPER HOME *of the* "*Ship*." So that the Caſes about *caſual* Reſidences are not at all like the preſent Caſe. And this Harbour or Baſon is expreſsly ſtated to be "*within* the Pariſh of *Burton-Bradſtock*."

Mr. Juſtice ASTON concurred; and obſerved that the Statute of 13 & 14 *C.* 2. *c.* 12. was made to reſtrain the Migrations of idle vagabond People from Pariſh to Pariſh; and for removing them back to their own *former* Pariſh.

He ſaid, he thought that *mere Watching* on Board a Ship was not a Reſidence ſufficient to gain a Settlement within 3 & 4 *W.* & *M.* *c.* 11. Nor will a Veſſel *in tranſitu*, accidentally ſtopping at a Port to repair a Leak, or take in Water, or any ſuch *caſual* Occaſion, gain a Settlement to the Sailors on Board.

But this was the proper *Home* of the Ship: It is expreſsly and circumſtantially ſo ſtated. And this Home of the Ship is ſtated to be WITHIN *this Pariſh* of *Burton-Bradſtock*.

A *caſual* Inhabitancy *only to watch a Ship* (which I ſhould think will not gain a Settlement) is very different from an APPRENTICESHIP SERVED ON BOARD IT, *at its proper Home*.

Per Cur.——

ORDERS AFFIRMED: And the RULE DISCHARGED.

Vide poſt, No. 199.

Trinity

Trinity Term

5 Geo. 3. 1765.

No. 172. **Rex *v.* Inhabitants of Uttoxeter.**

Wednesday 19th *June* 1765.

The *Value* of a Tenement is immaterial, in the Hands of an Executor.

TWO Juſtices made an Order for the Removal of *William Gilbert* and his Wife and three Children from *Marchington Woodlands* in the County of *Stafford* to *Uttoxeter* in the ſame County: And the Seſſions, upon an Appeal, confirmed that Order.

The Special Caſe ſtated on the Order of Seſſions was this——The Pauper *William Gilbert* was legally ſettled in *Uttoxeter*. His Mother rented and reſided upon a Farm of 22*l. per Annum* in *Marchington Woodlands*; which ſhe *deviſed to her five Children*, and made the *Pauper and her three other Sons Executors* of her Will; and died. The *Pauper alone proved the Will*; and *entered as her Executor* and managed and *reſided upon it for twelve or thirteen Weeks*. He afterwards returned to *Uttoxeter*; but continued to go over to *Marchington Woodlands*, to give Directions, from Time to Time; and had a Servant upon the Farm, till the *Lady-day* following. The Pauper poſſeſſed all the Teſtatrix's perſonal Eſtate, and paid the Arrears of Rent due in his Mother's Life-time, and the Year's Rent ending at *Lady-day* 1758, to the Landlord's Agent; who gave him a Receipt for 44*l.* in full for all Arrears of Rent, and the Rent to become due to *Lady-day* next: And the ſaid Agent offered to let the Pauper continue to hold the Farm after *Lady-day* 1758, if he would not inſiſt on Repairs; which Terms the Pauper did not chooſe to accept. That he gained *no* Settlement after his Reſidence at *Marchington Woodlands* aforeſaid. The ſaid Pauper was choſen Churchwarden [not ſaying *where*;] and was ſworn into that Office; but did no Act as Churchwarden.

On *Saturday* 4th of laſt Month, a Motion was made by Mr. *Ley*, to quaſh theſe Orders: And he had a

3 RULE *to ſhew Cauſe.*

NOTE——

UTTOXETER and MARCHINGTON WOODLANDS.

NOTE——On ſhewing Cauſe, Sir *Fletcher Norton* and Mr. *Ley*, (the Counſel for quaſhing the Orders) gave up the Point relative to his *executing an annual Office* in the Pariſh.

Mr. *Dunning* and Mr. *Read*, who now ſhewed Cauſe, ſaid that nothing remained then, but his coming to ſettle upon a Tenement under the Value of 10*l.* a Year.

The Act of 9 & 10 *W.* 3. *c.* 11. ſays, "No Certificate-Man ſhall "gain a Settlement, unleſs he ſhall take a Leaſe of a Tenement of "10*l.* a Year Value, or execute ſome annual Office in the Pariſh."

1ſt, The *Meaning* of the Legiſlature is that he ſhall come to it by a *Leaſe* or ſome *Contract with the Owner*: And he muſt *reſide* upon it. But an *Executor* is *not anſwerable*, perſonally and in his *own* Property, to the Landlord: He is under *no Contract with him*.

2dly, Nor is this a ſufficient Reſidence in *Marchington Woodlands*. He ſtays no longer than his Truſt of Executorſhip required: He never meant it for a *Reſidence*.

The *Scarborough* Caſe*, between the Inhabitants of *Elvetham* and *Alton*, was only a *caſual* Reſidence.

* *V. ante*, No. 134.

3dly, The *Value* is not ſufficient: For he was only intitled to a *joint* Intereſt in 22*l.* a Year, with *four other Perſons*; or, at leaſt, with *three* other Perſons. So that his *Share* is nothing like *ten* Pounds *per Annum*. And his *proving the Will* makes no Difference: For the other three Executors *are equally* intitled, and *may* prove the Will as well as himſelf.

They cited the Caſe of *Marden* (*ante*, No. 111,) and the *Durham* Caſe of *Croft* and *Gainford* therein cited and allowed to be right.

This Man is *not* to be conſidered as equal to the Credit of 10*l.* a Year: And he came into the Pariſh *not* in his own Right; but *alieno Jure*. Therefore this is not like the Caſes of an *original Contractor's* not being removable from his *Own*: For this Man is only to collect the *Aſſets* of the Teſtatrix; And his own *beneficial* Intereſt is but one fourth or one fifth of 22*l. per Annum*.

Mr. *Ley* was beginning to ſpeak in Support of the Motion: But THE COURT ſtopt him, thinking it unneceſſary.

† *Mr. Juſtice* WILMOT ſaid, It is very true, that a *Share* not amounting to 10*l.* a Year, of a Tenement of above 10*l.* a Year in Value, will *not* do. But here he has a *Right* AS EXECUTOR. The VALUE therefore is totally *immaterial*, becauſe, *by Common Law*, no Perſon can be *removed from his own*: And one who has a Right

† *Lord Manſfield* was gone out of Court

UTTOXETER and MARCHINGTON WOODLANDS.

Right to reſide, *irremovably*, does thereby gain a Settlement, if he reſides forty *Days* *.

* *V. ante*, No. 4, No. 40, No. 110, and No. 166.

Mr. Juſtice YATES——If poor Perſons *voluntarily* come into Pariſhes to ſettle in Tenements under the Value of 10*l.* a Year, the Act of 13 & 14 *C.* 2. *c.* 12. prevents their gaining a Settlement by their intruding into Pariſhes, as Strollers and Vagabonds, and with the bad Intentions mentioned in the Preamble of that Statute: But if an Intereſt in a Tenement, of ever ſo *little* Value DEVOLVES *upon* a Perſon *by Act of Law*, it is a quite different Caſe, and by no Means within the Proviſions or Purview or the Intent of that Statute.

Mr. Juſtice ASTON expreſſed himſelf to the like Effect: And moreover he cited a Caſe where this Point had been fully and ſolemnly ſettled; *viz.* *Rex* v. *Inhabitants of Sundriſh* †, *Tr.* 7 & 8 *G.* 2. wherein it was determined "that any Perſon who has an In-"tereſt *by Act of Law*, may dwell upon it as his own, and is *irre-*"*moveable*; and *if* he remains forty Days, gains a Settlement: For he "*can not* be taken to come into the Pariſh upon the *ill Views* which "are provided againſt by the Act of 13 & 14 *C.* 2. *c.* 12; and is "therefore *not within* the Purview of that Statute."

† *V. ante*, No. 4. No. 40, No. 110, and No. 166, S. P.

Per Cur. unanimouſly——

BOTH ORDERS QUASHED.

No. 173. Rex v. Inhabitants of Whitechurch Canonicorum.

Thurſday 20th *June* 1765.

A *parol* Binding, without an *Indenture*, will not gain a Settlement by *Apprenticeſhip*. And a *Binding* as an *Apprentice* cannot be converted into a *Hiring* a *Servant*.

TWO Juſtices made an Order for the Removal of *John Gay*, *Suſannah* his Wife, *Matthew*, *Sarah*, *Mark*, *Luke*, *John* and *Cæſar* their Children, from *Wotton Fitzepayne* in the County of *Dorſet*, to *Whitechurch Canonicorum* in the ſame County: And the Seſſions, upon an Appeal, confirmed that Order.

The Facts ſtated upon the Order of Seſſions were as follow—— The Pauper *John Gay* was ſettled in *Whitechurch Canonicorum*. After he was ſo ſettled, and was of the Age of twenty-two Years, it was *agreed* between him and *William Burridge*, a Stone-Maſon, who lived in the ſaid Pariſh of *Wotton Fitzepayne*, That the ſaid *William Burridge* ſhould take the ſaid *John Gay* *Apprentice* for the Term of ſix Years, and teach him his Trade of a Stone-Maſon; and ſhould,

ſhould, during the Term of his Apprenticeſhip, provide for him Meat Drink Waſhing Lodging and Clothing, and that the ſaid *John Gay* ſhould live with and work for him *as his Apprentice* in his ſaid Trade during that Term; and that Indentures *ſhould be* executed between them accordingly: But no *ſuch Indentures were ever executed.* The ſaid *John Gay*, immediately after the ſaid Agreement was made, went to live with the ſaid *William Burridge*, and *worked for him as an Apprentice* in his Trade for five Years and upwards, in the ſaid Pariſh of *Wotton Fitz-payne*, and was alſo *ſometimes employed* by the ſaid *William Burridge* in *Huſbandry-Buſineſs*; of which the ſaid *John Gay complained* to the ſaid *William Burridge* as *contrary*, to the ſaid Agreement by which the ſaid *John Gay* was to work for the ſaid *William Burridge* in the *Trade of a Stone-Maſon*. The Pauper, before the Expiration of the laſt Year of the ſaid Term, married, and left his Maſter with his Maſter's Conſent. There never was any other Contract or Agreement between the Pauper and the ſaid *William Burridge*. *No Wages* were ever paid by the ſaid *William Burridge* to the ſaid *John Gay*: But *a little Pocket-Money* was *ſometimes given* to him by the ſaid *William Burridge*. The ſaid *William Burridge* and *John Gay always conſidered themſelves as Maſter and Apprentice*: But *as no Indenture was ever executed* between them, they *thought* that they were *at Liberty to part* when they pleaſed. And when the ſaid *John Gay* complained to the ſaid *William Burridge*, "That he ought not to be employed except in his Buſineſs "of a Stone-Maſon," the ſaid *William Burridge told* the ſaid *John Gay*, "*That he might go away if he pleaſed.*" The Pauper had not gained any Settlement ſave as aforeſaid. Whereupon the Seſſions adjudged "that the ſaid *John Gay* did *not* gain any Settlement in the "ſaid Pariſh of *Wotton Fitz-payne*;" and therefore confirmed the Order of the two Juſtices.

Mr. *Dunning* and Mr. *Meſeres* having moved (on the third *Wedneſday* in laſt *Eaſter* Term) to quaſh theſe Orders, a Rule was then made to

SHEW CAUSE.

And now Mr. *Thurlow* and Mr. *Monſfield* ſhewed Cauſe why the Orders ſhould not be quaſhed.

This Man was *neither bound* as an *Apprentice*; *nor hired* as a *Servant*. He could not be an Apprentice, becauſe there is *no Indenture*: Nor is there any *Hiring*, either expreſs or implied. The Ob-

WHITE-CHURCH CANONICORUM and WOTTON FITZ-PAYNE.

jects are different: And a Binding as an Apprentice, and a Hiring as a Servant, can not be converted one into the other.

They cited 5 *Mod.* 328, *Rex* v. *Inhabitants of Chesterfield*, the Case of Sir *Paul Jenkinson's* Servant *Francis Jenison*; and the Case between the Inhabitants of *Corfe Castle* and *Weybill* *, concerning Mr. *Pyke's* Servant.

* *V. ante*, No. 157, *Rex* v. *Inhabitants of Weybill.*

On the other Side, it was contended to be good as a *Hiring and Service.* But

THE COURT were clearly and unanimously of Opinion "That the Rule ought to be discharged:" And the Case of *Rex* v. *Inhabitants of St. Mary Kallendar in Winchester* †, was mentioned as in Point.

† *V. ante*, pa. 274, No. 95.

RULE DISCHARGED,
And consequently,
BOTH ORDERS AFFIRMED *.

* *Vide ante*, No. 94, 102, 104, *Post*, No. 203, 227, 262. 2 *Bernardist.* 39. S. P.

No. 174. Rex *v.* Inhabitants of St. Luke's in Middlesex.

Wednesday 26th *June* 1765.

TWO Justices made an Order for the Removal of *William Hutchins*, *Mary* his Wife, and their two Children, from *St. Leonard's Shoreditch* to *St. Luke's* (both in *Middlesex:*) And the Sessions, upon an Appeal, confirmed that Order.

An *Apprentice* cannot gain a Settlement, by serving a *new* Master, in a *different* Parish, without an *Assignment*, or *Consent* of the *original* Master. 1 *Blac. Rep.* 553. S. C.

The Special Case stated——*William Hutchins*, the Pauper, at 15 Years of Age was *bound Apprentice by the Parish of St. Peter Cornhill* to one *Frost* a Shoemaker in *Southwark*, till he should come to the Age of 24 Years: and served him there three Years. The Master then removed to the Parish of *St. Luke* in *Middlesex*, taking the *Pauper* with him; where he *served four Years.* The Master then told him to *go about his Business, and work for himself:* But no one was present at the Parting, but the Master and himself. The *Indentures were* NOT *cancelled or delivered up.* The Pauper *hired himself to several Masters* of the same Trade, as a *Journeyman Shoemaker*, in *different Parishes*; and believed the said *Frost* did not know what Masters he worked with, after he left him; nor was he ever *called upon* by, or did he ever *account with* the said *Frost* for what he earned, but applied the Money to *his own Use*: Nor did the said *Frost* ever make any *Inquiry* after him, that he knew of; or make any *Provision* for him, after he left him. He *worked and lodged* the *last forty Days* before he attained the Age of twenty-four Years, in the Parish of

St. Leonard Shoreditch. The Seſſions were of Opinion "that the "ſaid *William Hutchins* did *not* gain a Settlement in *St. Leonard's* "*Shoreditch*:" and therefore confirmed the Order of the two Juſtices.

ST. LUKE *and* ST. LEONARD SHOREDITCH.

On *Friday* the 7th of this Month (the firſt Day of this *Trinity* Term) a Motion was made by Mr. *Lane* to quaſh this Order of Seſſions, upon two Exceptions.

1ſt, The Maſter could not *diſcharge* this Apprentice without the *Conſent* of the *Pariſh* of *St. Peter Cornhill*, who *bound him out*.

2dly, The *Indentures* were *never cancelled or delivered* up: Therefore he was not properly diſcharged.

RULE *to ſhew Cauſe.*

Upon ſhewing Cauſe now againſt quaſhing the Orders, it was inſiſted by *Sir Fletcher Norton* and Mr. *Jones*, that this was not a Service by the Apprentice in *St. Leonard's* WITH THE CONSENT *of his Maſter*: And therefore it was not a Service *under* the Indenture. They had long before *parted by Conſent*: Therefore he was *not* ſerving his *Maſter* there. It is not like the Caſes where the Maſter gives his expreſs Conſent to his Apprentice's working with a particular Perſon.

They cited the Caſe of *Buckington* and *St. Michael's Sebington*, in 2 Lord *Raymond* 1352, and 1 Sir *John Strange* 582, as a ſtrong Authority to prove that he was ſettled in *St. Luke's*.

On the contrary, it was ſaid by Mr. *Lane* and Mr. *Stowe*, that *this* was a ſufficient Service for an *Apprentice* to gain a Settlement under; as the Indentures were not cancelled or given up, but continued in Force.

In the Caſe cited, the Maſter was broke and run away: Here, the Maſter *conſented*. Beſides, in *that* Caſe the Apprentice was *not capable of making the Contract* which he there entered into; *viz.* Hiring himſelf to ſerve for a Year as a *hired* Servant.

This was a Working *for his Maſter*, and *under* the Indenture which *continued in Force*. The laſt forty Days Reſidence therefore gained the Settlement in *St. Leonard's*.

Lord MANSFIELD——The Indenture of Apprenticeſhip REMAINED *in Force*: And the Relation of Maſter and Apprentice *continued*. But this Service in *St. Leonard's* can't be conſidered either as a *Service of his firſt* Maſter, or as an *Aſſignment*.

St. Luke and St. Leonard Shoreditch.

Mr. Juſtice WILMOT——The Apprentice's Settlement in *St. Luke's continued.* He was *incapable* of making a Contract by Way of *Hiring and Service*, or of *any* Act to gain a Settlement.

If the Maſter had *aſſigned over* this Apprentice to a *particular Perſon*, it would have gained him a Settlement *as a Service to the firſt Maſter.*

But here the Apprentice was *ſui juris*, as to the Purpoſe of *gaining a Settlement as* ſerving his firſt Maſter. What had paſſed was a total Diſſolution of the Apprenticeſhip, *as to this particular Purpoſe of gaining a Settlement under* the Indenture. This Working in *St. Leonard's* was *not* carrying on the *Buſineſs of the firſt Maſter there*, or ſerving UNDER *the original Apprenticeſhip* in *this Pariſh of St. Leonard.*

Mr. Juſtice YATES was of the ſame Opinion. He could not gain a Settlement there, by ſerving in that Pariſh *under a Contract* which he was *not ſui Juris to make.*

It *differs* from an *Aſſignment* of an Apprentice to ſerve a *particular* Maſter in another Pariſh. *That* indeed *may* be deemed a Service of his firſt Maſter *in* that Pariſh. But here was *no Privity* between the *firſt* Maſter and the others whom he ſerved after he had quitted the firſt. It was a Liberty given by the Maſter to the Apprentice "to go where he would, and work for himſelf where he "would."

Therefore the Settlement continued to be in *that* Pariſh where he had laſt ſerved *his firſt Maſter* as an Apprentice, for *forty Days*; which was in *St. Luke's.*

Mr. Juſtice ASTON concurred, for the Reaſons given by Mr. Juſtice *Wilmot* and Mr. Juſtice *Yates.*

Lord MANSFIELD——The Indenture ſubſiſted: And *this* Service in *St. Leonard's* can *not* be conſidered *either* as a Service of the *firſt* Maſter, or as an *Aſſignment.* Therefore

Per Cur. unanimouſly——

The RULE *was* DISCHARGED: And
The ORDERS *were* CONFIRMED *.

* *Vide ante*, No. 5, and the ſeveral Caſes referred to at the End of it, *pa.* 16. and *particularly* No. 91, 95, 133, 174, 186, 250, 256.

Michaelmas

Michaelmas Term 6 Geo. 3. 1765.

No Determination of this Sort.

Hilary Term

6 Geo. 3. 1766.

Rex *v.* Inhabitants of Underbarrow and Bradley-Field. No. 175.

Monday 27th *Jan.* 1766.

Hiring and *Service* for a Year will gain a Settlement, though *Part* of the Service be performed under a *prior* Hiring, for *leſs* than a Year.

TWO Juſtices made an Order for the Removal of *Anne Kellet* from *Underbarrow and Bradley-Field* in the County of *Weſtmorland* to *Croſthwaite and Lythe* in the ſame County: And the Seſſions, upon an Appeal, diſcharged that Order.

The Order of Seſſions ſtates the Facts to be thus——

Special CASE——*Anne Kellet*, Singlewoman, hired herſelf at *Whitſuntide* 1763, to *John Thompſon* of *Croſthwaite and Lythe*, to ſerve him till the *Whitſuntide* following [1764]: Which Method of Hiring (from *Whitſuntide* to *Whitſuntide*) is the uſual Courſe of hiring Servants by the Year in that County of *Weſtmorland*. In Purſuance of *this* Hiring, ſhe ſerved him till *Martinmas* following [1763;] received her Wages for that Time; and QUITTED his Service. At the *Chriſtmas* following [1763,] ſhe hired herſelf to the *ſaid John Thompſon*, to ſerve him at *Croſthwaite and Lythe*, till *Whitſuntide* then next following [1764] at One Pound Wages; which ſhe received. At the SAME *Whitſuntide*, ſhe hired herſelf for one Year to the *ſaid John Thompſon*, to ſerve him from that Time till *Whitſuntide*

UNDERBARROW & BRADLEY-FIELD *and* CROSTHWAITE & LYTHE.

Whitſuntide 1765, at *Croſthwaite and Lythe* aforeſaid: And ſhe *continued* in her ſaid Maſter's Service at *Croſthwaite and Lythe* aforeſaid, *under the ſaid Hirings*, from the Beginning of *January* 1764 *till* the Beginning of *March* 1765; and then quitted her ſaid Service, and received Wages in Proportion to that Time; being lame, and not able to ſerve him any longer. The Seſſions were of Opinion "That the ſaid *Anne Kellet* gained NO *Settlement* thereby in the "ſaid Townſhip of *Croſthwaite and Lythe*;" and therefore quaſhed the Order of the two Juſtices, ſubject nevertheleſs to the Opinion of *this* Court.

On *Thurſday* 14th *November* laſt, Mr. *Stowe* moved, on Behalf of the Townſhip of *Underbarrow and Bradley-Field*, to quaſh this Order of Seſſions and affirm the original Order.

His Objection was, That her Settlement was at *Croſthwaite and Lythe*: For that there was, upon the *whole* State of theſe Facts, a Hiring for a Year, AND a Service for a Year, when both were *coupled together*; *though* indeed the *firſt* HIRING was for *leſs* than a Year; and the *ſecond* SERVICE was likewiſe for *leſs* than a Year.

RULE *to ſhew Cauſe.*

Mr. *Dunning* and Mr. *Wallace* now ſhewed Cauſe why this Order of Seſſions ſhould not be quaſhed.

Three ſeveral Hirings are here ſtated; But the laſt only is for a Year. For the *firſt* Hiring is *out of the Caſe*; as the Service under it was *totally diſcontinued*; and the *ſecond* Hiring was but for about ſix Months. But the ſubſequent *continued* Service after the third Hiring being taken all together, and coupled with the prior Service under the ſecond Hiring, amounts to *more* than a Year: And it has been ſettled "that a *ſubſequent* Service for leſs than a Year performed un-"der a Hiring for a whole Year, *coupled with a prior Service* under "a Hiring for leſs than a Year, ſhall gain a Settlement; provided "that there be (upon the whole) *both* a Hiring for a Year and alſo "a Service for a Year *."

* *V. ante*, pa. 280. No. 98. See alſo *ante* No. 37, 87. *Poſt*. No. 249. *Douglas*, 296. S. P.

Bridget Baily's Caſe, of *Overton* in *Hants*, *H.* 10 *W.* 3. was the firſt Time the Court coupled a PRIOR *Service* with a SUBSEQUENT *Hiring*, and held her to be ſettled in *Steventon*, becauſe ſhe ſerved above a Year in all. *V. Caſes of Settlements*, pa. 257, Caſe 295. 3 *Salk.* pa. 257; and 12 *Mod.* 224. (All S. C. and *all* of them moſt † egregiouſly *erroneous*.)

† See the Note at the End of the preſent Caſe; where the *true* State of it is tranſcribed from the Record.

The

The Case of *South Moulton* in *Suffolk*, *Hil.* 10 *W.* 3. was a like Determination. The Maid was a Covenant-Servant; first, for Half a Year, which she served; and then, for another Year, and served half of that: It was holden to be a Service for a Year, within the new Statute. *V.* 1 Lord *Raym.* 426.

UNDERBARROW & BRADLEY-FIELD *and* CROSTHWAITE & LYTHE.

Then in 12 *G.* 1. *B. R. Rex* v. *Inhabitants of Aynhoe* *—The Court held that they were *bound by the* PRECEDENTS; and determined, *upon Authority of the* PRECEDENTS †, "That such a "Hiring and such a Service made a Settlement." The Pauper was hired, in *Bicester*, from *Christmas* to *Michaelmas*, and served till *Michaelmas:* Then he was hired for a Year, and served till *Midsummer*. This was holden to gain him a Settlement in *Bicester*.

But Dr. *Burn* ‡ has, in his *tenth* Edition, remarked that these two *Foundation-Cases*, *viz.* that of *Overton*, and that of *South Moulton*, were *both of them* ANTECEDENT in Time to the *Statute of* 8 & 9 *W.* 3. which, besides a Hiring for a Year, requires a *Continuance in the same Service* for a *Year* §. *Bridget Baily's* Service expired in *April* 1696; and the Act was not made *till* after that Time; for the Sessions did not begin till 20th *October* 1696. So that both her Hirings and the Whole of her Service were prior to the Act of Parliament of 8 & 9 *W.* 3. which did not take Force, perhaps, till 1st *May* 1697. *Before* that Act, a Hiring, for a Year, and *forty Days subsequent* Service, were sufficient to have gained a Settlement. In the *South Moulton* Case, the same Thing will appear by computing the Times ‖.

☞ Dr. BURN *presided* at this present Session, which made the Order *now* in question.

§ Section 4.

Therefore the Question is *still open*.

In the Case of *Rex* v. *Inhabitants of Aynhoe*, Lord *Raymond* and also Mr. Justice *Page* declared that *if* it had been then ** *Res integra*, they should have adjudged it to be no Settlement in *Bicester*. And it *now appears to be so*; as the two *supposed* Precedents were in Fact *no* Precedents at all, being *prior* to the Statute of 8 & 9 *W.* 3.

* *V.* Lord *Raym.* 1511, *M.* 1 G. 2. 1727, and *Sessions Cases*, Edit. 1758, Vol. 2, Case 119, pa. 129, and *Foley*, pa. 155.

† Particularly that of *Brightwell* and *West Hallam*, *Pasch.* 1 *G.* 1. *V. Sessions Cases*, Vol. 1, pa. 92, No. 87. *Foley*, pa. 154, and *Lucas*, 287.

‡ See Dr. *Burn's tenth* Edition, Title, "*Poor, Settlement by Service*;" Vol. 3, pa. 308, and 317.

‖ See this Computation in Dr. *Burn's tenth* Edition, in octavo, pa. 317.

** *V.* Dr. *Burn's* same *tenth* Edition in octavo, Vol. 3, pa. 315, 316, and in *Foley*, pa. 155 (a) (in the third Edition;) and in a Lord *Raym.* 1511, and very imperfectly and incorrectly in *Fitz-Gibbon*, pa. 3.

(a) Dr. *Burn* cites this Case from *Foley*, as being in pa. 144.

Therefore

UNDERBARROW & BRADLEY-FIELD *and* CROSTHWAITE & LYTHE.

Therefore the *Service* ought to be SUBSEQUENT to the *Hiring* for a Year, and *according to it:* Or elſe, it can not gain a Settlement.

They acknowledged that the *Caſes* were *againſt* them: But what they ſtrongly urged was, that thoſe Caſes were *founded on an Error*; and therefore the Superſtructure built upon them muſt of Courſe fall to the Ground.

Lord MANSFIELD——The AUTHORITY of theſe Caſes will be juſt the *ſame*, whether the *Facts* were prior to the Statute, or not: Becauſe the Court determined them AS upon Facts *ſubſequent* to the Statute*.

Dr. *Burn* has great Merit: He has done great Service; and deſerves great Commendation: and his Opinion is ſupported by the Arguments and Obſervations which he has urged in favour of it.

But there are *many Determinations* the *other* Way: And upon the Reaſon of the Thing, the Man's Credit ariſing from his being hired for a Year is as ſtrong in the one Caſe as in the other. Therefore the Determinations are *better* founded upon Reaſon, than the Objection to them is. Beſides, they are in *Favour* of Settlements: Which is ſufficient to turn the Scale, if it hung quite even.

For *ſeveral* Reaſons therefore we ſhould not depart from theſe adjudged Caſes; but *chiefly*, from the Inconvenience of altering and overturning *ſettled* Determinations. It is beſt, *ſtare deciſis*. The Overturning ſettled Determinations would be of very bad Conſequence: They ought not to be ſhaken.

The *Practice* was *adhered to* in the † *Bewdley* Caſe, though irreconcilable to a very recent Act of Parliament.

The *Foundation-Caſes* that have been objected to are *as good Authorities* as if the Facts of them had been *right*: For it is the *Ground* of thoſe Determinations, *not* the *Facts* of them, which were *perhaps* § miſapprehended, that gives them WEIGHT as *Precedents for future Determinations*.

Mr. Juſtice WILMOT ſpoke likewiſe with great Regard of Dr. *Burn* (as indeed all the World does;) and he thought the Doctor had reaſoned very ſenſibly and ingeniouſly in Support of his Opinion: And he further added, that *if* it had been *Res integra*, he might perhaps have thought ſo too; or, at leaſt, have *doubted* upon it.

* *V.* 1 Lord *Raym.* 426. The Queſtion in the *South Moulton* Caſe is expreſsly ſtated to be, "Whether it was a Service for a Year *within the new Statute*."

† *V.* 1 *Peere Williams* 212, 219, 223, 224. *Regina* v. *Bullivos et Burgenſes de Bewdley.*

§ But ſee my Note at the End of this Caſe: Which ſhews "that they were *not* miſapprehended."

But,

But, it is *now* SETTLED; and the Determination is in *Favour* of Settlements: And therefore it would be of ill Conſequence to vary from ſuch a ſettled Determination.

UNDERBARROW & BRADLEY-FIELD *and* CROSTHWAITE & LYTHE.

He declared the Maxim—"*ſtare deciſis*"—to be, in his Opinion, *always* proper; more eſpecially here: and was therefore for eſtabliſhing the Original Order, and diſcharging that made at Seſſions.

Mr. Juſtice YATES ſpoke to the ſame Effect.—Otherwiſe, he ſaid, he ſhould have held as Dr. *Burn* did: For by 8 & 9 *W.* 3. *c.* 30. it is required to be "a *Continuance* in the *ſame* Service."

Mr. Juſtice ASTON concurred: And added that Lord *Hardwicke* was likewiſe of the Opinion "*ſtare deciſis*;" and was very ſenſible of the Inconvenience of departing from *ſettled* Determinations.

Upon the Whole therefore, by the unanimous Opinion of the Court, *grounded* upon this Principle of "not overturning ſettled "Determinations;" (and not upon a Difference of Sentiment from Dr. *Burn*, or Diſapprobation of his Reaſons;) they quaſhed this Order of Seſſions, and affirmed that of the two Juſtices.

Order of Seſſions QUASHED.
Original Order AFFIRMED.

NOTE:—As Dr. *Burn* has taken great Pains to come at the Truth of Facts, and is moſt accurate and judicious in his Obſervations upon them, he has a Right to the Aſſiſtance of every one who can contribute towards the Eclairciſſement of his Doubts. This ſeemed to be, in ſome Meaſure, in my Power upon the preſent Occaſion. I have therefore ſearched the Files for the two Orders, of *Overton* in *Hants*, and *South-Moulton* in *Suffolk*.

The former is thus ſtated, upon the Order of Seſſions: And that Order bears Date on the 4th of *October* 10 *W.* 3. (which was 1698.) "*Bridgett Bayly*, before the 25th Day "of *March* 1697, was a ſettled Inhabitant in the Pariſh of "*Overton*; and on or about the ſaid 25th Day of *March*, "the ſaid *Bridgett* contracted with one *John Orpwood* of "*Steventon* aforeſaid, for the Wages of twenty Shillings, to "ſerve him from the ſaid 25th Day of *March* 1697, till

UNDERBARROW & BRADLEY-FIELD *and* CROSTHWAITE & LYTHE.

"*Michaelmas* then next following: Which Tyme the ſaid "*Bridgett* ſerved accordingly. And at the ſaid *Michaelmas* "the ſaid *Orpwood* contracted with the ſaid *Bridgett*, from "the ſaid *Michaelmas for one Year* enſueing, for the Wages "of thirtie Shillings: And the ſaid *Bridgett*, according to the "ſaid laſt-mentioned Contract, remained with the ſaid *Orp-* "*wood* till ſome Tyme in the Moneth of *April* 1698; in "which Moneth, by the mutual Conſent of the ſaid "*Bridgett* and the ſaid *Orpwood*, the ſaid *Bridgett* left the "ſaid *Orpwood's* Service; and the ſaid *Orpwood* paid to the "ſaid *Bridgett* her Proportion of Wages then due."

The Seſſions, upon hearing what could be alledged by Counſel on both Sides, "did think the abovementioned "Hire, and Service aforeſaid continueing for the Tyme of "more than one whole Yeare, to be a good Settlement in "the ſaid Pariſh of *Steventon*; and therefore do think fitt "to rattyfye and confirme the Order made by the two Ju-"ſtices of the Peace: And the ſame is hereby rattifyed and "confirmed accordingly."

So that Dr. *Burn*, has been led into the Obſervations and Computations which he has printed in his *tenth* Edition pa. 308, and pa. 317, by the Inaccuracy of the three different Reporters of that Caſe.* ALL of them miſtake the *true Dates*; and *Two* of them have miſtaken them no leſs than *ten* Years; the *other* only *two* Years. And *all* of them *omit* to mention that the ſecond Hiring was *for a Year*, (an *eſſential* Circumſtance:) They only ſay, "to ſerve him *for* "*a* LONGER *Time*.

It is Pity that ſo able and accurate a Writer as Dr. *Burn* was obliged to depend upon *ſuch* Information.

The latter Caſe (of *South Moulton*) I cannot find; though I have carefully ſearched the Files of *both* the 9th Year and the 10th Year of King *William*; and Seſſions-Orders are *uſually* filed in or a little before the Term wherein the Motion is made to quaſh them; and Cauſe is generally ſhewn the next Term, or ſometimes within the ſame Term.

It is not abſolutely impoſſible that this Caſe (of *South-Moulton*) ſhould be the very ſame with that of *Overton*. It has juſt now appeared manifeſtly, how very wide of the Mark *ſome* Reporters are, and how little they are to be depended

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* See the *fifteenth* Edition of the *Doctor's* moſt invaluable Work, Tit. "POOR, (*Settlement by Service*;)" 3. V. p. 438, 9. wherein the Miſtake is candidly acknowledged, attributed to its proper Cauſe, and rectified.

pended upon. *Lord Raymond's* Report of the *South-Moulton* Caſe is only from *Hearſay* (of his Friend *Herbert Jacob:*) 'Tis *not his own* Note. It is very *looſe:* And *no Names* of either *Perſon* or *Pariſhes* are ſpecified; "an Order was "made to remove a *Woman* from *B.* to *C.*" His Report * conſiſts but of nine Lines and an Half: And he ſhortly mentions what *Rokeby*, *Turton*, and *Gould* held. The late LORD FORTESCUE † has reported the Caſe of *Overton* and *Steventon*, as of the *ſame Term*, in the *ſame looſe Manner*, and indeed in the *ſame* Number of Lines; and *as ſhortly* concludes with theſe Words——"*Per Rokeby, Turton*, and "*Gould*, This anſwers the End of the Act, *&c.*" *Both* agree in the Point determined: And it appears from *both* their Reports, that the QUESTION was the *ſame*, *viz.* "Whether it was a Service for a Year, WITHIN *the new* "*Act.*"

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* 1 Ld. *Raym.* 426.

† *Forteſc. Rep.* 316.

I have added *this Note*, for the Satisfaction of Dr. *Burn*; And I hope it will be acceptable to him: Some *other* Gentlemen may perhaps think it long and tedious.

Rex. *v.* Inhabitants of Silcheſter. No. 176.

TWO Juſtices made an Order for the Removal of *Jane Moor*, *Singlewoman*, from *Enborn* in *Berkſhire* to *Silcheſter* in *Hants* and *Berks:* And the Seſſions, upon an Appeal, confirmed that Order.

Saturday 1ſt *Feb.* 1766.

ORDER of Juſtices, unappealed from, is *final.*

Special CASE ſtated——The Pauper *Jane Moor* was ſent ſometime in *July* 1764, together with one *George Wiſe*, by an Order of Removal under the Hands and Seals of two Juſtices FROM *the Pariſh of* NEWBURY to the Pariſh of *Enborn*, by the *Names* of *George Wiſe* and *Jane* HIS WIFE: And there was NO *Appeal* from the ſaid Order, to the next or any other Seſſions. Afterwards, the Pariſh of *Enborn* finding that *Jane* was NOT *the Wife* of *George Wiſe*, removed her, by original Order, *by the Name of* "*Jane* "*Moor*, SINGLEWOMAN," from the ſaid Pariſh of *Enborn* to the Pariſh of *Silcheſter*, under an Order of two Juſtices: From which Order the ſaid Pariſh of *Silcheſter* appealed. And upon hearing the Appeal, it was *proved* "that the ſaid *Jane* NEVER WAS MAR-

Silchester and Enborn.

"RIED *to the ſaid George Wiſe.*" Therefore the Seſſions affirmed the Order of the two Juſtices.

A Motion had been made by Mr. *Vanſittart* (on the ſecond *Tueſday* in laſt *Michaelmas* Term) to quaſh theſe Orders: And a

RULE *to ſhew Cauſe.*

Sir *Fletcher Norton* was now to have ſupported the Orders; and ſaid that *if* it had been *Res integra*, he thought a good Deal might be urged to ſhew that they were right: But he acknowledged it to have been *fully ſettled* "That an Order of Removal to a Pariſh, "confirmed without Appeal by ſuch Pariſh, concludes *that* Pariſh "againſt all the World."

But Mr. *Seutz*, on the ſame Side, attempted (and with ſome Ingenuity) to maintain theſe Orders; and urged the Hardſhip of being precluded from controverting the Truth of the Fact upon which the prior Order was founded; which Fact the Pariſh of *Enborn* had not ſufficient Time to inquire into, before the limited Time of appealing was *paſt*; but which as ſoon as ſuch Inquiry could be perfected, came out to be *falſe*. And he argued that this Caſe was *not within* the general Rule: For there had never been any Adjudication of this *Woman's* laſt legal Settlement, nor had it ever been inquired into; ſhe having been ſent to *Enborn*, the Place of *George Wiſe's* Settlement, *as* his Wife; which (in Fact) ſhe was *not*, but had a diſtinct Settlement of her *Own*.

Sir *Fletcher Norton* acknowledged, however, that it had been eſtabliſhed * "That an Order unappealed from, is *concluſive*."

* *V. ante*, No. 67, and 2 Sir *T. R.* 1173, S. C. in Point. See alſo *ante*, No. 96. *Poſt*. No. 204. S. P.

And The Court were ſo clear in this, as a Point *ſettled*, that they did not even hear Mr. *Morton*, on the Side of the Objection.

They ſaid that whatever the Hardſhip might be in this particular Caſe, or how doubtful ſoever this Queſtion might be if it was *Res integra*; yet it's being fully SETTLED, was a Reaſon for them not to depart from it now: For, that "*ſtare deciſis*" was always a good Rule; and never more ſo, than in Caſes of Settlements of Paupers, where it would make the utmoſt Confuſion if they ſhould overturn ſettled Determinations, which the Juſtices of Peace all over *England* had been uſed to look upon as the Rules of their Conduct in ſimilar Caſes, and to act under the Sanction and Authority of them.

If

If ſhe was not his Wife, it might have been controverted: But as they have *neglected* to appeal when they had a proper Opportunity to ſhew it, they are *eſtopped* to ſay ſo *now*.

SILCHESTER, *and* ENDON.

And *Mr. Juſtice* ASTON mentioned a Caſe of one *Mary Broomhall* * ; where the Pariſh of *Maidſtone* having given a Certificate calling her the *Wife* of *Richard Burden*, they could not afterwards controvert it.

* *V. ante*, No. 86.

Per Cur.——

RULE *made* ABSOLUTE *for* QUASHING *both Orders.*

Rex *v.* Inhabitants of Dunchurch. No. 177.

Tueſday 11th *Feb.* 1766.

TWO Juſtices made an Order for the Removal of *Elizabeth Tanſur* the Widow of *Edward Tanſur* from *South Kilworth* in the County of *Leiceſter* to *Dunchurch* in the County of *Warwick:* And the Seſſions, upon an Appeal, confirmed the Order of the two Juſtices, and diſcharged *South Kilworth* of the Pauper *Elizabeth Tanſur*; ſubject to the Opinion of *this* Court on the following Facts; *viz.*

The Sum given for an Eſtate is the true *Criterion* of its Value: and if that be *under* 30*l.* no Settlement can be gained, in reſpect of *ſubſequent Improvements.* *Blac. Rep.* 596, 598, S. C.

Edward Tanſur was *duly* CERTIFICATED *from* DUNCHURCH *to South Kilworth*; where he reſided with his Wife and Family to the Time of his Death.

Upon the Trial of this Appeal, It appeared *by* PAROL *Evidence* of the Pauper and her Son only, (which Evidence was objected to by the Counſel for the Reſpondents) that about 25 Years ſince, the Pauper and her Huſband the ſaid *Edward Tanſur* were JOINT *Purchaſers* of a Houſe Yard and Garden-Place at *South Kilworth*; and paid for the Purchaſe thereof 19*l.* and upwards. And *Edward Tanſur laid out about* 15*l.* more, to put it in Repair; and built a new Shop on Part of the Premiſſes; and was *taxed** after the Rate of a Tenement of 30*l.* Value, for the firſt two Years after he bought it; and *reſided* in the ſaid purchaſed Premiſſes, *till* the Time of his *Death.*

After *Edward Tanſur's* Death, *his Widow* (the Pauper) *continued in Poſſeſſion* of the ſaid Houſe and Premiſſes for about ten Months; and then went to Service for about five Years; and during that

* This Circumſtance is very material; and, if the Taxes were paid, ſeems to have merited a more attentive Conſideration than it met with. *Vide ante*, No. 138.

Time,

DUNCHURCH and SOUTH KILWORTH.

Time, ſhe *let* the ſaid Premiſſes to her Son *Edward*, for *twenty* Shillings a Year; but declared "ſhe *could* have let it for 30*s.* a "Year or more, to other Perſons."

The Pauper, when ſhe left her Service, (which was about three Years ago,) *returned to her Houſe at South Kilworth*, and ſoon after *ſold* the Garden-Place, for 20*l.* 3*s.* 6*d.* and about the ſame Time, by Deed of Gift, gave to her Son *Walter*, Part of the Yard, being ten Yards in Length, and ſix in Breadth, for him to build a Houſe upon.

It alſo appeared by Indenture of Feoffment dated the 8th of *November* 1763, (which Indenture was produced and proved,) that the Pauper, in Conſideration of natural Love and Affection and of ten Pounds, granted the *Reſidue* of the ſaid Premiſſes to her Son *Edward* and his Heirs, to the Uſes following; *viz.* as to the Parlour, Chamber over it, and the Pantry (Part of the Premiſſes,) to the Uſe of the PAUPER FOR LIFE, ſans Waſte; Remainder to *Edward*, in Fee; and as to the Reſidue of the Premiſſes, to the Uſe of the ſaid *Edward*, in Fee: And *Edward* covenanted to keep the Whole of the Premiſſes in Repair.

It alſo appeared, by parol Evidence, that the Pauper continued to dwell in *that Part* of the Houſe which was ſo limited to her for her Life, *till* ſhe applied to the Pariſh-Officers, for Relief; And being told, by a Juſtice of Peace for the ſaid County of *Leiceſter*, (who was applied to on that Occaſion and afterwards ſigned the Order of Removal,) "That ſhe could not be removed from that "Pariſh to *Duncburch*, WHILST *ſhe* CONTINUED *to live on her* "OWN *Freehold*;" ſhe thereupon *went* OUT *of her* OWN *Houſe*, for a little Time before ſhe was removed; and went to her *Daughter's* Houſe, which is in the *ſame Pariſh*; and *let her own* Houſe to her *Son* for *Sixpence*; and was relieved at her Daughter's Houſe, by the Pariſh-Officers, about a Week; and then removed from thence, by Order of two Juſtices, to *Duncburch*, as the Place of her legal Settlement; *notwithſtanding* ſhe then was, as aforeſaid, *entitled for her Life*, to the Premiſſes ſhe went out of, in Order to her being relieved and removed by Order to the Pariſh of *Duncburch*.

On *Wedneſday* 13th of *November* laſt, Mr. *Caldecott* moved to quaſh theſe Orders: And a Rule was made to

SHEW CAUSE.

Sir *Fletcher Norton* now ſhewed Cauſe, on Behalf of the Inhabitants of *South Kilworth*, why theſe Orders ſhould not be quaſhed; and

and was, of courſe, to maintain that the Pauper's Settlement was in *Duncburch* who gave the Certificate, and that *none* was gained in *South Kilworth*.

The ſingle Queſtion is "Whether the Seſſions did right in *re-* "*ceiving* PAROL *Evidence* of the Settlement of this *Elizabeth Tan-* "*ſur*:"

To ſhew her to be ſettled at *Kilworth*, the Pariſh of *Duncburch* were obliged to prove a *Purchaſe* made 25 Years ago by her Huſband, and ſettled upon himſelf and his Wife.

Now, in Order to this, a *Deed* muſt be PRODUCED, unleſs ſome *Foundation* is laid for giving parol Evidence of the *Contents* of it.

But here the Juſtices admitted the Woman to give *parol* Evidence of the *Contents* of this Deed, without any apparent Reaſon or Foundation for ſo doing. Beſides, it is admitting the Pauper to prove a *Title* in *herſelf*.

On the contrary, it was argued by Mr. *Caldecott* and Mr. *Wheeler*, that the Settlement of this Pauper was in *South Kilworth*.

The Conſideration of the Purchaſe is 19 *l.* in Money; and he laid out 15 *l.* more upon it; which, together, amount to *above* 30 *l.*: And it was *rated* to the Poor *as* a Tenement of 30 *l.* Value. *After the Huſband's Death*, ſhe had it by *Survivorſhip*, and *reſided upon it*, and then ſold off the Value of 20 *l.* to one; and 10 *l.* to another; and *reſerved* ſome for herſelf. It was therefore worth, *to her*, above 30 *l.* And ſhe was reſident in her *own* Houſe, when ſhe firſt applied to the Pariſh-Officers for Relief.

IF the Objection to the parol Evidence be laid out of the Caſe, it will appear that ſhe was ſettled in *South Kilworth*. And as to her producing the *Deeds*,——It *was not in her Power* to PRODUCE the *Deeds*; becauſe ſhe had not them in her Cuſtody, nor could have them *after* ſhe *ſold* the Eſtate.

The Seſſions do *not try Titles*: They only inquire after *Settlements*; and muſt take the *beſt Evidence they can get*, as to *that* Matter.

But here was a *Feoffment* to her Son. And all the Evidence muſt be taken *together*: And then, upon the *whole*, there is enough to ſhew a *Settlement in South Kilworth*.

As long as ſhe continued IN *the Pariſh*, ſhe could not be removed. It was not neceſſary to reſide *upon* it. This happens to be a Houſe: But it might have been *Land*. A Reſidence in an *Alehouſe*

DUNCHURCH *and* SOUTH KILWORTH.

house is sufficient; though not UPON the Eſtate *itſelf*: 'Tis enough if it be in the ſame Pariſh *. And ſince ſhe continued *irremovable* from her *own* Tenement above forty Days, ſhe thereby gained a Settlement † in the Pariſh.

To prove that this Purchaſe was *equivalent* to 30 *l.* Value, they cited the Caſe between the Inhabitants of ‡ *St. Paul's Walden* and *Kimpton*, P. 13 *G.* 1. *B. R.*: Where the Fine and Court-Fees which the Churchwardens advanced, were added to the Purchaſe-Money, to make up the 30 *l.* And yet it gained a Settlement. And alſo the Caſe between the Inhabitants of *Waddingham* and *Tedford* §, Tr. 8 & 9 *G.* 2. *B. R.*: Where the Purchaſe was only 9 *l.* of the Purchaſer's own Money, and a Mortgage for 30 *l.* more, which he borrowed: And yet this was held to gain a Settlement. Mr. *Galdecott* alſo cited a Caſe in *H.* 2 *G.* 2. *Rex v. Inhabitants of Benjoe*, *Foley* 255, 256, and *Seſſions Caſes*, Edit. 1750, Vol. 2, Caſe 126, pa. 139.—"The Purchaſe-Money was 25 *l.* and the Mo-"ney laid out made it above 30 *l.* And it was held, as he ſaid, to "make a good Settlement; *Reynolds J. Diſſentient.*"

But THE COURT ‖ *doubted* this Caſe; or rather thought it could not be ſo, being contrary to the Intention of the Act of 9 *G.* 1. *c.* 7. *ſect.* 5.

Sir *Fletcher Norton contra*, agreed to take *all* the State of the Caſe *together*.

But ADMITTING the *Evidence* to have been properly received; yet here is only a Purchaſe, *by a Certificate-Man*, of 19 *l.*; Upon which, 15 *l.* was AFTERWARDS laid out for Repairs; and ſo was *made* worth above 30 *l.*: But it was *not originally* ſo, at the *Time* of the Purchaſe.

This is not a *Purchaſe* of 30 *l.* Value: The CONSIDERATION *bonâ fide paid* muſt be 30 *l.* A *ſubſequent* [illegible] can not *make* it ſo, if it was not ſo *at firſt*.

As to the Caſes cited—*Rex* v. *Inhabitants of Benjoe* was manifeſtly *never adjudged*. And in the Caſe of *St. Paul's Walden*, *P.* 13 *G.* 1. the Fine was *Part* of the Purchaſe-Money, though the Churchwardens advanced it. As to the *Tedford*-Caſe——The Man mortgaged the Eſtate after he had bought it: But he had paid for it, with

* *V. ante*, No. 40.

† *V. ante*, No. 110. No. 166.

‡ *V. Foley* 254, and *Seſſions Caſes*, Edit. 1750, Vol. 2, pa. 127. No. 118.

§ *V. ante*. No. 18. ſee alſo *ante*, No. 61.

‖ There is *no Rule* entered in the Rule-Book. It was adjourned in *Hilary* Term 1728, 2 G. 2. (as appears by my own Note-book,) and I believe never came on again. *Page* and *Probyn* thought it out of the Act of 9 G. 1. and Lord *Raymond* inclined to think ſo too: But *Reynolds* thought it within the Act, and that *no* Settlement was gained. *Sed adjournatur.*

the

the Money which he had borrowed. The Purchaſe-Money was all of it *bonâ fide* paid to the Vendor: It was no Matter, to the Vendor, how the Purchaſer came by it. DUNCHURCH and SOUTH KILWORTH.

But it has been objected "that ſhe was IRREMOVABLE *out of the* "*Pariſh* of *South Kilworth*, as long as ſhe had an Eſtate of her "own there, and continued to reſide any where *within* the *Pa*- "*riſh*."

Anſwer—It is ſtated "that ſhe went OUT *of her Own into* her "*Daughter's* Houſe." She did this *in order to remove* any Objection; and *afterwards let* her own, and then applied to be relieved. So that ſhe cannot properly be ſaid to have been removed *from her own*: For ſhe had *quitted* her *own*.

In the Caſe of *Sydbury* and *Sowton* * where the Man reſided at an Alehouſe, the Eſtate was not *ſuch* an Eſtate *upon* which he *could* reſide. * *Vide ante*, No. 40.

Lord MANSFIELD.—The whole Queſtion is "Whether "this Woman was a *bonâ fide Purchaſer* of an Eſtate of 30 *l. Va*- "*lue*."

She cannot be *preſumed* to come to it by *Deſcent or Executorſhip*, or any ſuch like Act of Law; becauſe the *contrary appears*: And a Preſumption only ſtands *till* the contrary be proved.

The Caſe of *Rex* v. *Inhabitants of Benjoe*, *H.* 2 *G.* 2. was adjourned with a *Curia adviſare vult*; and no Determination appears on the Record in the Office: Therefore that Caſe is *no Authority*.

I cannot think the Act of 9 *G.* 1. can be conſtrued in the Manner that has been now attempted: It draws the Line *according to the Purchaſe-Money*. The letting-in any Thing that is *ſubſequent*, would *overturn* the whole Act: The Act takes the VALUE *of the* PURCHASE, from the *Purchaſe-Money* actually *paid*.

In the *Tedford* Caſe, of the Mortgage-Money, it was *in Fact* a Purchaſe of an Eſtate of the *Value* of 39 *l. though* the Purchaſer might *borrow* Part of the Money (upon Mortgage) to pay for it.

Mr. Juſtice WILMOT——Here the Huſband and Wife appear to have been joint Purchaſers, 25 Years ago: They took *jointly* and by *Entierty*; not by Moieties. If ſo, ſhe can only ſtand in the ſame Situation as her Huſband did: Which is that of a *Purchaſer*.

NO Money *afterwards* laid out, can make the *prior Purchaſe* to have been of a greater Value than it really was at the *Time* of making it.

DUNCHURCH and SOUTH KILWORTH.

Before 9 *G.* 1. People purchaſed *ſmall* Intereſts; and they purchaſed *colluſively*. To obviate theſe two Inconveniences, the Act makes the CRITERION to be 30 *l. bonâ fide given*; be the *real* Value more or leſs. Surely *ſubſequent* Improvements can not be conſidered with a *Retroſpect*.

As to removing a Perſon from their *own*——She *became* an Object of Removal *as ſoon* as ſhe had *let* it to her Son. Therefore this Caſe is not like that of *Sowton* and *Sydbury**, where the Man all along reſided at the Public Houſe.

* *V. ante*, No. 40.

I am of Opinion that ſhe gained *no* Settlement under this Freehold.

Mr. Juſtice YATES——We muſt take the *whole* Caſe *together*: And from that it appears that this was a joint Purchaſe by Huſband and Wife; and therefore we muſt conſider *her as a Purchaſer*.

The Act of 9 *G.* 1. is as plain and clear as poſſible "That it "muſt be a Purchaſe of 30 *l.* Value at the *Time* of the Purchaſe." And as the Statute has made *this* the *Criterion*, we have no Authority, nor is there any Reaſon for us to depart from it.

Mr. Juſtice ASTON declared his Concurrence. Whereupon

Per Cur. unanimouſly——

RULE DISCHARGED: And the ORDERS AFFIRMED.

No. 178. Rex *v.* Inhabitants of Staunton under Bardon.

Friday 12th *Feb.* 1766.

Taking *Part* of a Farm, of the Value of 10 *l.* *per annum*, for *leſs* than a Year; will gain a Settlement.

TWO Juſtices made an Order for the Removal of *William Harriſon*, *Sarah* his wife, and *William* and *Elizabeth* their Children, from *Uleſcroft* in *Leiceſterſhire* to *Staunton under Bardon* in the Pariſh of *Thornton* in the ſame County: And the Seſſions, upon an Appeal, confirmed that Order.

Special CASE——Some ſhort Time before the 25th of *March* 1763, *Thomas Orton* took of *Jonathan Pilgrim* a Farm in *Uleſcroft*, conſiſting of a Dwelling-houſe and ſeveral Cloſes and Lands, then at the yearly Rent of 45 *l.* He entered upon the ſame on the ſaid 25th of *March* and occupied ſuch Premiſes until about the

the Middle of *May* following; during which Time, he ſtocked the ſame with Cattle; and then gave up the Poſſeſſion thereof, by Conſent of Parties, to the ſaid *Jonathan Pilgrim*. Upon ſuch giving up the Poſſeſſion of the ſaid Farm, Mr. *Pilgrim* took the Poſſeſſion thereof, ſtocked it with his Cattle, and occupied the ſame till the 29th of *May*: When he let Part of ſuch Farm to the Pauper *William Harriſon*, until the *Lady-day* following, under Payment of the Rent or Sum of 26 Guineas, *Harriſon* to pay half the Poor's Levies, do half the Repairs, have the Manure then in the Yard, and leave the ſame Quantity at his quitting. *Harriſon* entered upon that Part of the Farm he took as aforeſaid, about the 1ſt or 2d Day of *June* following; ſtocked the ſame; brought thither the following Crop he was entitled to, from the Farm he before held at *Staunton under Bardon*; plowed Part of the Land, and ſowed it with Turneps; held the whole Premiſſes ſet to him as aforeſaid, till *Lady-day* following; paid the 26 Guineas, upon a Diſtreſs taken for it; and then quitted the ſame. His Taking the Farm at *Uleſcroft* appeared to be a *bonâ fide* Taking, *without* Fraud or Intention of gaining a Settlement in the Liberty of *Uleſcroft*.

Sir *Fletcher Norton*, who moved to quaſh theſe Orders on *Tueſday* 2d *January* 1766, ſaid the only Queſtion was "Whether *Wil-*
"*liam Harriſon's* living on a Tenement of more than the Value of
"10*l.* a Year (*viz.* 26 Guineas) for *above forty Days irremovable*,
"did *thereby* gain a Settlement."

RULE *to ſhew Cauſe*.

Mr. *Dunning* (who was to have ſhewn Cauſe) now allowed the Orders to be be indefenſible—Wherefore

RULE MADE ABSOLUTE *to* QUASH *both Orders* (*without Defence.*)

Vide ante, No. 151. *Poſt*. No. 185. S. P. *accord.*

Easter Term

6 Geo. 3. 1766.

No. 179.

Rex *v.* Inhabitants of Ingleton.

Saturday 26th *April* 1766.

TWO Juſtices made an Order for the Removal of *Richard Speddy* and *Roſe* his Wife from *Aſtwick* to *Ingleton*, both in the Weſt-Riding of *Yorkſhire*: And the Seſſions, upon an Appeal, confirmed that Order, and ſtated the ſpecial Caſe thus——

A *voluntary Settlement* of cuſtomary Tenements, under the Value of 30*l.* is not a *Purchaſe*, within the Stat. 9 *Geo.* 1. *c.* 7. *ſ.* 5. and will therefore avoid a CERTIFICATE.

The ſaid *Richard Speddy* and *Roſe* his Wife, being legally ſettled in *Ingleton*, about 43 Years ago came to inhabit in *Aſtwick*, where they have reſided ever ſince; and brought with them a proper CERTIFICATE *from* INGLETON, acknowledging them to be legally ſettled *there*; which they delivered to the proper Officer at *Aſtwick*.

About 32 Years ago, a *Cuſtomary Cottage* ſituate in *Aſtwick* was, in Conſideration of *natural Love and Affection*, conveyed by the *Father* of the ſaid *Roſe Speddy* unto her Uſe *for Life*; and after her Deceaſe, to the Uſe of *Jane* her Daughter and *her Heirs*.

The ſaid *Richard Speddy* and *Roſe* his Wife *entered* on the ſaid Cottage, and *continued in Poſſeſſion* SIXTEEN *Years* without Interruption: and then the ſaid *Richard purchaſed* of his ſaid Daughter *Jane* her *Remainder in Fee* in the ſaid Premiſſes, for *five Pounds*; and was *admitted* Tenant thereof; and *continued* Poſſeſſion of the ſame, *eight or nine Years* longer; when they *ſold* the ſame to *Francis Howſon* for 20 Guineas.

About ten Years ago, *Jane Ward*, Aunt to the ſaid *Roſe* the Wife of *Richard Speddy*, in Conſideration of *natural Love and Affection*, conveyed a *Moiety* of *another cuſtomary Meſſuage and Tenement* with ſome *Lands* thereto belonging, ſituate in *Aſtwick* aforeſaid of the yearly Value of *four Pounds*, unto the ſaid *Richard Speddy and Roſe*, during their *Lives*; and after their Death, unto *Thomas*

Thomas their *Son* his Heirs and Assigns for ever; and the *other Moiety*, unto their said Daughter *Jane* and her Heirs.

The said *Richard Speddy* and *Rose* his Wife *entered* into Possession of, and have *resided* in the said Tenement ever since, and *continued* so to do at the *Time* of their being removed.

But, on the 21st of *January* last past, in Consideration of ten Pounds, they the said *Richard Speddy* and *Rose* his Wife *conveyed* their said *Moiety* of the said last mentioned Tenement unto *Thomas Speddy* their Son (who lives with them in the same House.)

And *since* the making such Conveyance to the said *Thomas* the Son, and *before* the making the said Order of Removal, the said *Richard Speddy* and *Rose* his Wife *became actually chargeable* to the said Township of *Astwick*.

The Sessions were of Opinion "That the said *Richard Speddy* "and *Rose* his Wife gained *no* Settlement in *Astwick*;" and therefore confirmed the Order of the two Justices.

On the LAST * *Day* of the last Term Sir *Fletcher Norton* moved to quash these Orders: And it was the very last Motion too.

* I acquainted the Court (consisting then of three Judges only, Lord *Mansfield* being gone) of the settled Rule "that "a Motion can not be made to quash an ORDER, upon "the *last* Day of a Term." See my *Reports*, Part 4. Vol. 1. pa. 651.

THE THREE JUDGES did not see any *Reason*, they said, for the Distinction between *Orders* and *Indictments*: But MR. JUSTICE ASTON agreed to the *Fact*, "That there *is* such a Distinction."

MR. JUSTICE WILMOT, however, was for adhering to the Rule, *if* it was so.

But Sir *Fletcher Norton* disputing it, and pressing his Motion, the three Judges permitted him to go on with it, *salvo Jure* (as Mr. Justice *Wilmot* expressed it:) And they gave him a

RULE *to shew Cause*.

Mr. *Wallace* was now to have shewn Cause against quashing the Orders,

But he gave them up as indefensible, since the Determination lately * made in the Case of *Rex* v. *Inhabitants of Marwood*; (this being

* *V. ante*, No. 124.

Ingleton and Astwick.

being a *voluntary* Settlement, and *not* a *Purchaſe* within the Intent and Meaning of the Statute of 9 *G.* 1. *c.* 7. *ſect.* 5.)

Whereupon Sir *Fletcher Norton* prayed that the Rule might be made abſolute.

And accordingly,

The Rule *was made* Absolute, *for* Quashing *the Original Order of two Juſtices, and alſo the Order of Seſſions made in Confirmation of it:* And

Both Orders *were* Quashed.

V. Poſt. No. 182, *Rex* v. *Inhabitants of Ilmington.* See alſo *Douglas*, 738, that a *Deviſe* is not a *Purchaſe* within the Statute.

No. 180. Rex *v.* Inhabitants of Eccleſal-Bierlow in Sheffield.

Monday 12th *May* 1766.

A *Pariſh Apprenticeſhip* may be *diſſolved*, by the *Conſent* of the *Maſter*, and *Apprentice*, if of full Age, without the *Conſent* of the *Pariſh Officers*. 1 *Blac. Rep.* 592. S. C.

TWO Juſtices made an Order for the Removal of *Samuel Wilſhaw* together with *Mary* and *William* his Children from the Townſhip of *Warſlow and Elſtone* in *Alſtonfield* in the County of *Stafford* to *Eccleſal-Bierlow* in *Sheffield* in the County of *York:* And the Seſſions, upon an Appeal, confirmed that Order.

Special Case ſtated——The Pauper *Samuel Wilſhaw, being ſixteen Years of Age*, was *bound out, by the Pariſh*, an *Apprentice* to *William Aſhforth*, a Cutler, and an Inhabitant of the Townſhip of *Eccleſal-Bierlow*, for the Term of eight Years. He reſided there, under that Indenture, upwards of five Years. After *he had attained the Age of twenty-one* Years, he *and his* Maſter came to an Agreement *together*, "*to* cancel *the Indentures* of Apprenticeſhip:" And thereupon the Maſter delivered up the ſaid Indentures to the Pauper to be cancelled; and the ſame were accordingly cancelled. That *afterwards* the Pauper was *hired for a Year* to one *Robert Mellor* of *Warſlow*; and ſerved for a Year in *Warſlow*, in Purſuance of ſuch Hiring; and received his whole Year's Wages. And the Pauper has gained no Settlement ſince the ſaid Service with *Robert Mellor*.

On

On *Wedneſday* 5th *February*; a Motion was made by Mr. *Kenyon*, to quaſh theſe Orders. Ecclesial-Bierlow and Warslow & Elstone.

RULE *to ſhew Cauſe.*

The Queſtion was "Whether an *Apprentice of* FULL AGE "(bound out when *under* Age, *by the Pariſh*,) can AGREE *to* CAN-"CEL *the Indentures*; and *afterwards gain a Settlement* for himſelf "by a *Hiring and Service for a Year.*"

Sir *Fletcher Norton* and Mr. *Gould* (on Behalf of the Townſhip of *Warſlow*) now ſhewed Cauſe againſt quaſhing the Orders.

This Apprentice was *not ſui juris*, when he entered into the Contract "*to ſerve in Warſlow*;" Nor could he be *compelled* to perform it. And he could not gain a Settlement there, *as ſerving* UNDER *the Apprenticeſhip*, with the *Conſent of the Maſter*, and for the *Maſter's Benefit*. The Caſe of *Alice Wheeler*, in 2 *Strange* 1001*, is of the *latter* Kind. But *here*, the Maſter has *no Concern* in the Matter.

* *V. ante*, No. 5. S. C.

They cited *Dalton* 180, and 2 *Strange* 582, the Caſe of *Buckington* Pariſh; 2 Lord *Raym.* 1352, S. C. and the Caſe of *Rex* v. *Inhabitants of Auſtrey* †, where it was determined "that an Ap-"prentice *under* Age can not diſſolve the Indentures."

† *V. ante*, No. 142.

Here, indeed, the Apprentice is *above* 21. But this is a *Binding by the Pariſh under* 43 *Eliz. c.* 2; and therefore the Apprentice, *though* ABOVE 21 at the Time of the Tranſaction, could *not cancel* the Indentures, *without the Approbation of the Overſeers* of the Pariſh: *Their Conſent* was eſſentially neceſſary to his being diſcharged from the Indentures.

Lord MANSFIELD——There ſeems to be *no* Neceſſity of the *Pariſh-Officers joining* in the Conſent to *diſcharge* this Apprentice. There is *no Authority* for it: And I ſee *no Inconvenience* to the Pariſh or to any one elſe, in its being done *without* their Concurrence. The Act of Parliament impowers them to bind the Man-Child out Apprentice till he comes to the Age of 24. And the Act ‖ of Parliament was neceſſary to make valid the *Binding* of the Male Pariſh-Apprentice till his Age of 24; for he could not be bound longer than till 21, *without* the Aid of the Act: And two Juſtices of the Peace are to aſſent to *this*. But the ſame Reaſon don't hold, as to the *Diſcharge* of the Apprentice: This concerns the Maſter and the Apprentice only. The *latter* Part of the Apprentice's Time is of *moſt Service* to the Maſter. Therefore, the

‖ *V.* 43 *Eliz. c.* 2. *ſect.* 5.

Apprentice

Ecclesal-Bierlow and Warslow & Elstone.

Apprentice being of Age, if the Master and he agree to it, they two may dissolve the Contract

Mr. Justice Wilmot concurred; and thought alike with Lord *Mansfield* as to the *Reason* of the Parish-Officers Consent being required to the Binding, and the Necessity of an Act of Parliament in Order to oblige the Apprentice to serve on *till* 24 Years of Age, if bound agreeably to the Directions of it; whereas he would not otherwise have been obliged to serve on, after his coming of full Age. But if *after* he is of full Age, the Master and he agree to it, the Indentures may be cancelled *without* the Consent of the Parish-Officers. If so, then this Person was *sui Juris* when he hired himself at *Warslow*: And consequently, he gained a Settlement there by a Hiring for a Year and Service for a Year.

Mr. Justice Yates concurred: And he observed, that this Objection of the Want of the Consent of the Parish-Officers does not come from the Parish who bound him out; but from the Township of *Warslow*, who have nothing to do with it.

Mr. Justice Aston being likewise of the same Opinion,

The Rule *was made* absolute *for quashing both* Orders.

Both Orders quashed.

See the several Cases referred to at the Bottom of *pa.* 16, and *particularly* No. 95, 239.

Trinity

Trinity Term

6 Geo. 3. 1766.

Rex *v.* Inhabitants of Frome-Selwood. No. 181.

Saturday 14th *June* 1766.

Abſence, by FRAUD, at the *End* of the Year will not defeat a Settlement by Hiring and Service.

TWO Juſtices made an Order for the Removal of *Betty Stent* Widow and her five Children (naming them, and ſpecifying their Ages) by *Richard Stent* her late Huſband deceaſed, from *Frome-Selwood* in *Somerſetſhire*, to *Brixton Deverel* in *Wiltſhire*: On Appeal to the Seſſions, the *firſt* Seſſions took it up, and ſtated the following Caſe; and confirmed the Order of the two Juſtices, ſubject to the Opinion of this Court on the Caſe ſo ſtated; After which, they *reſpited* the Appeal.

CASE——*Richard Stent* (the Huſband of *Betty*) was hired for a year by *William Prangley* at *King's Weſton*, at the Wages of 5*l.* And, under this Contract, he ſerved the ſaid *William Prangley* in *King's Weſton till within* TEN *Days of the End* of the Year; when the ſaid *Richard Stent* declaring to his Maſter "that he wiſhed "*not* to be ſettled in *King's Weſton*," aſked his LEAVE to go and *viſit his Relations*: To which, *the Maſter conſented*. After the Year was expired, the ſaid *Richard Stent returned* to his ſaid Maſter; and then hired himſelf *as a Day-Labourer*; and *as ſuch* he continued with him for about three Months. Sometime after the ſaid *Richard Stent's* Return, he and *Prangley* made up their Accounts; *allowing for the Days he had been abſent* the preceding Year, out of his daily Wages.

This was the Caſe as ſtated by the firſt Seſſions.

Then the ſubſequent Seſſions take up the Appeal, (reciting that it had been reſpited by the preceding Seſſions,) and upon the Facts and Circumſtances *then* admitted on both Sides, *abſolutely* diſcharged and vacated the Order of the two Juſtices.

FROME-SELWOOD *and* BRIXTON DEVERELL.

On *Friday* the first Day of this Term, Mr. *Gould* moved to quash this Order of Sessions, insisting that the Hiring and Service was *dissolved* by the Agreement entered into between the Master and the Servant, "*to finish* the Service *before the Year should be up:*" And he had a

RULE *to shew Cause.*

But on shewing Cause.

THE COURT held the said *Richard Stent's* Settlement (upon the State of this Case) to be in *King's Weston*; Looking upon the Leave and Consent of the Master as fraudulent, and a mere *Evasion* of the Settlement. †

† See *a similar Decision, ante,* No. 139.

And therefore now

The ORDER *of two Justices was* QUASHED; *And* ORDER *of Sessions* AFFIRMED.

No. 182. Rex *v.* Inhabitants of Ilmington.

Wednesday, 18th *June* 1766.

TWO Justices made an Order for the Removal of *Elizabeth Evans* Widow from *Mickleton* in the County of *Gloucester* to *Ilmington* in the County of *Warwick:* And the Sessions, upon an Appeal, confirmed that Order.

A leasehold Tenement purchased by the *Wife* before Marriage, for less than 30*l.* will gain the *Husband* a Settlement; and such Settlement will communicate itself to the *Wife. Blac. Rep.* 598. S. C.

The Order of Sessions states the Case thus——*Theophilus Evans,* being legally settled in *Ilmington,* about 33 Years ago married the above-named *Elizabeth Evans* his Wife, then *Elizabeth Stanley* Spinster; *who had before,* by Indenture bearing Date the 25th Day of *March* 1724, *purchased a* LEASEHOLD Tenement situate in the said Parish of *Mickleton,* for the Sum of SIX *Pounds,* for the *Remainder of a Term of* 1000 *Years.* The said *Elizabeth resided* in the said Tenement for about *nine* Years *before her intermarrying* with the said *Theophilus Evans:* And after such Intermarriage, the said *Theophilus Evans,* together with the said *Elizabeth* his Wife, the Pauper, RESIDED *in the said Tenement,* about *sixteen* Years; when the said *Theophilus Evans* died, leaving the said *Elizabeth* surviving him. The said *Elizabeth Evans, after* her said Husband's Death, *continued to reside* in the said Tenement till about *Christmas* last (1765;) when she *sold and conveyed* the same Tenement to *James Stanley,* for the Sum of SIX *Pounds*; and was afterwards removed from the said Parish of *Mickleton* to the said Parish of *Ilmington.*

Mr.

ILMINGTON and MICKLETON.

Mr. *Selwin* had before moved (on the firſt *Thurſday* in this Term) to quaſh theſe Orders; and had a Rule to ſhew Cauſe.

Mr. *Vernon* and Mr. *Morton*, (on Behalf of the Pariſh of *Mickleton*) now ſhewed Cauſe againſt quaſhing them.

This Queſtion depends on 9 *G.* 1. *c.* 7. *ſect.* 5. which ſays "that "no Perſon ſhall acquire any Settlement, by Virtue of any PURCHASE for a Conſideration of leſs than 30 *l.* Value, *bonâ fide* paid, "*for any* LONGER *Time* than ſuch Perſon ſhall *inhabit thereon.*"

Now *this Tranſaction*, they argued, is ELUSIVE *of the Statute:* It is a *Purchaſe*, for the Price of 6 *l. only*, of a Leaſehold Eſtate for a *Term of* 1000 *Years.*

The Words of the Act are——"*for or by Virtue* of *any* Purchaſe "under 30 *l.* Value." This Term would *ſurvive* to the Wife, if ſhe out-lived her Huſband: And if he had ſurvived her, he could not have had it without taking out *Adminiſtration* to his Wife. It was clearly a *Purchaſe* by the *Wife*: And the Huſband had no Claim to it, but by *Virtue* of that Purchaſe.

No ſimilar Caſe has ever been before the Court.

Mr. *Selwin*, *contra*, (for the Pariſh of *Ilmington*,) owned it to be a *new* Caſe; but ſaid it was *within the* REASON of Caſes heretofore determined.

In Caſes of DESCENT, a Settlement is gained; *though* the original Purchaſe be *under* 30 *l.* Value. And there is as much Reaſon why a Settlement ſhould be gained in the *preſent* Caſe.

There is *no Fraud* in this Tranſaction: And here is a *Reſidence of* 42 *Years*, in the whole.

The Act of 13 & 14 *C.* 2. *c.* 12. is the firſt Statute that gives Power to remove a Perſon from their Place of *Reſidence* at all: And even *after* that Statute, *till* 9 *G.* 1. *c.* 7. *forty Days Reſidence upon a Perſon's own property*, would gain a Settlement.

The *Reaſon* given by Lord Chief Juſtice *Ryder*, in the Caſe of *Rex* v. *Inhabitants of Marwood**, *H.* 29 *G.* 2. *B. R.* will hold in *this* Caſe. So, in the Caſe of *Rex* v. *Inhabitants of Uffculme* †, Lord *Manſfield* reaſons to the like Effect. And it appears from both thoſe Reſolutions, that there is a Diſtinction between an *actual* Purchaſe, and a *legal* Purchaſe (in the technical Senſe of the Term "Purchaſe.")

* *V. ante*, No. 124.

† *V. ante*, No. 138.

This Woman had an Eſtate veſted in her, *when Evans married her*; which, upon the marriage, *veſted in him.*

ILLINGTON and MICKLETON.

There is a *Parliamentary* Expoſition of the Meaning of the Terms uſed in 9 G. 1. It is in the Act of 10 *Ann. c.* 23. *ſect.* 2. (the Act to prevent fraudulent Conveyances in order to multiply Votes for electing Knights of Shires to ſerve in Parliament,) which prohibits voting in Right of Lands which they have not had for a Year before: "*unleſs* they came to ſuch Eſtate by *Deſcent*, *Mar-*"*riage*, Marriage-Settlement, Deviſe, Preſentation, or Promotion "to ſome Office."

Here, the Huſband gained a Settlement in *Mickleton* by 40 *Days Reſidence upon his own Eſtate*, and his Settlement *communicated itſelf* to the *Wife*. Therefore the Wife ought *not* to have been removed *from Mickleton*: And conſequently, both theſe Orders ought to be quaſhed.

Sir *Fletcher Norton* was on the ſame Side: But

Lord MANSFIELD ſtopt him from going on; Declaring himſelf of Opinion with Mr. *Selwin*; both for his *Reaſons*, and upon his *Authorities*.

THE OTHER JUDGES declared themſelves likewiſe to be of the ſame Opinion.

Whereupon——

The RULE *was made* ABSOLUTE *for* QUASHING *both* ORDERS.

BOTH ORDERS QUASHED.

Vide ante, No. 179. *Rex* v. *Inhabitants of Ingleton.*

Michaelmas

*Michaelmas Term

7 Geo. 3. 1766.

* MEMORANDUM——On the 6th of *November* 1766 (the firſt Day of this Term) *Mr. Serjeant* HEWITT (who kiſſed Hands in the Morning, and was ſworn in, at the Lord Chancellor's, in the Evening of the preceding Day,) took his Place upon the Bench, as puiſné Judge of this Court. He ſucceeded *Mr. Juſtice* WILMOT, who on the 21ſt of *Auguſt* laſt was made *Lord Chief Juſtice* of the *Common Pleas*, in the Room of *Lord Camden*.

Rex *v.* Inhabitants of Caſtleton. No. 183.

Thurſday 6th *Nov.* 1766.

The Place where an *Apprentice lies* is the Place of his *legal* Settlement.

TWO Juſtices made an Order for the Removal of *John Holroid*, *Ann* his Wife, *Joſeph*, *Eunice*, *Sally*, and *Andrew*, their Children, (ſpecifying the Ages of the Children,) from *Caſtleton* to *Hundersfield*, both in the County Palatine of *Lancaſter*: Which original Order was ſet aſide and diſcharged by the Seſſions, upon the Appeal of the Inhabitants of *Hundersfield*; it being firſt ordered by the Court [of Seſſions] "That in Caſe a *Certiorari* is "brought to remove the ſaid Appeal, the Facts ſhall be eſpecially "ſtated. Which Facts are as follows"—Then the Seſſions-Order ſtates the Facts thus—

The Pauper *John Holroid* was, by Indenture dated the ſecond Day of *April* 1741, regularly bound an *Apprentice* to *John Rigby* of *Caſtleton*, Hatter, for the Term of ſeven Years; and worked dieted and lodged with his Maſter in *Caſtleton* for four Years and an Half; and then *married* a Woman who lived in *Hundersfield*. After ſuch Marriage, the *Apprentice* (the Pauper) *worked and dieted*, all along, with

CASTLETON and HUNDERSFIELD.

with his Maſter in *Caſtleton* in the *Day*-time, where his Maſter lived lodged and carried on his Trade: But the Pauper LODGED AT NIGHTS with his *Wife* at *her Father's Houſe in* HUNDERSFIELD, until the Expiration of the Apprenticeſhip, which was about two Years and an Half from the Time of his Marriage. *Rigby* the Maſter was *acquainted* with the intended Marriage of his ſaid Aprentice; and did *not take any Advantage of the Covenant* in the ſaid Indenture, ſo as to vacate the ſame; nor did he, before the Solemnization thereof or at any Time afterwards, *find Fault* with his Apprentice for ſo doing, The Maſter was *not aſked nor did give Leave* to his Apprentice *to* LODGE *in Hundersfield*; though he *knew* he lodged there, with his Wife, at her Father's Houſe.

On the firſt *Monday* in *Trinity* Term laſt, Mr. *Stowe* moved to quaſh this Order of Seſſions, and to affirm the original Order of the two Juſtices; and had a

RULE *to ſhew Cauſe.*

Mr. *Dunning* now ſhewed Cauſe, (the Rule having been enlarged by Conſent on the laſt Day of laſt Term:) And Sir *Fletcher Norton* was on Mr. *Stowe's* Side.

They agreed that the Caſe was awkwardly ſtated: *No Queſtion* is ſtated; nor is there any Adjudication "that the Pauper had gained "*no other* Settlement elſewhere."

Sir *Fletcher* argued from hence, That the Seſſions do *not appear* to have had any ſufficient *Reaſon to quaſh* the original Order: For it *may* be, "that the two Juſtices determined *right*." And it ſufficiently appears, that they *have* done ſo. The Queſtion undoubtedly was, "Whether the Place where the Apprentice *lodged at Nights* "was not the legal Place of his Settlement." And it is ſettled "that the Place where an Apprentice *lies*, is the Place of his Settle-"ment *.

* *V. ante*, No. 170, and No. 171.

Mr. *Dunning* aſſented to this laſt Poſition.

Lord MANSFIELD——Unleſs you are inſtructed otherwiſe, I ſuppoſe and take it for granted, that the Seſſions meant to ſtate thoſe Facts only, upon which they doubted. The *Point* on which they doubted, is manifeſt; *viz.* "Whether the Apprentice gained "a Settlement in *Hundersfield* by lodging there at Nights;" And you agree it to have been ſettled "that the Place where an Appren-"tice *lies* is the Place of his legal Settlement." Therefore, unleſs you *deſire* that it may be ſent back again to be re-ſtated, it is better

to

to ſave the Expence of further Proceedings. Therefore let the Rule be made abſolute for quaſhing the Order of Seſſions and affirming the original Order.

CASTLETON *and* HUNDERSFIELD.

ORDER *of* SESSIONS *quaſhed:* *Orginal* ORDER AFFIRMED.

Vide poſt. No. 221. S. P.

Rex *v.* Inhabitants of Llandverras. No. 184.

Wedneſday 26th *Nov.* 1766.

TWO Juſtices made an Order for the Removal of *Evan*, *Elizabeth*, *Grace*, *Mary*, and *Thomas Hughes*, the Children of *Evan Hughes* deceaſed, from *Llandverras* in the County of *Denbigh* to *Northop* in the County of *Flint:* And the Seſſions, upon an Appeal, quaſhed that Order.

Taking a Tenement of the *yearly Value* of 10*l.* will gain a Settlement, though *Part* of it be afterwards *under-let*. *Blac. Rep.* 603. S. C.

CASE——

In 1764, *Evan Hughes*, the Father of the Paupers, being ſettled in *Northop*, rented a Tenement of 10*l. per Annum* Value in the Pariſh of *Llandverras*, and *paid the Rent to the Landlord:* He *lived in a* PART *of it*, worth 40*s. a Year only*; *and* LET THE REST *to Under-tenants.*

N. B. This Caſe was afterwards * more fully ſtated. It does not even appear by *this* State of it, "*how long* "*Evan Hughes* lived on the Tenement."

* See the Note at the End of this Caſe.

On the laſt Day but one of *Trinity* Term 1766, Mr. *Kenyon* moved to quaſh this Order of Seſſions, and to affirm the original Order.

The Objection made to this Order of Seſſions was, That upon *this* State of the Caſe, he *only* OCCUPIED 40*s. a Year*. His being *liable* only to the Rent did not gain him a Settlement: He muſt *occupy* as well as *take* a Tenement of ten Pounds a Year Value; and he ought to *occupy the* WHOLE 10*l.* a Year. Otherwiſe, nine different poor Families might be introduced into a Pariſh, upon *one* ſuch Taking.

It would quite *evade* the Act, if the *mere Taking* of a Tenement would do; for then *One* would gain a Settlement by *taking*, and *Another* by *occupying* the ſame Tenement.

A Caſe

LLANDVERRAS *and* NORTHOP.

A Case was some Time ago determined at *York*, where two People took a Tenement of 17 * *l.* a Year, between them: But it was holden, "that no Settlement was gained by *either*."

In the Case of *Rex* v. *Inhabitants of Duns Tew* †, a Settlement was gained. That was 80 *l.* a Year between two. It was determined upon the Principle of Half being a Qualification for each; because it was *above* 10 *l.* a Year. But it had been otherwise, if it had been *under* 10 *l.* a Year.

Mr. *Kenyon* and Mr. *Dunning* prayed, therefore, that this Order of Sessions might be quashed.

Sir *Fletcher Norton* and Mr. *Morton*, *contra*, (for the Parish of *Northop*).

FRAUD can not be *intended*: It must be *found*.

This *Evan Hughes took* a Tenement of the Value of 10 *l.* a Year; and was the *Tenant* all the Time. It was *not necessary* for him to *occupy it himself*.

The Act of 13 & 14 *C.* 2. *c.* 12. speaks of Persons *coming to settle* in a Tenement under the Value of 10 *l.* a Year: It does not require a Person renting a Tenement *above* that Value, to *occupy* it: It is enough, if he *rents* it, and *resides* 40 *Days in the* PARISH.

Lord MANSFIELD was of this Opinion. If it be a *bonâ fide* Taking, he may *underlet* it as he pleases. If there should be any *Fraud* or *Collusion*, it might be *found*: But it is *not* to be *presumed*.

Mr. Justice YATES——As to the Case determined on the Northern Circuit, where two Persons jointly rented only seventeen Pounds a Year—*Neither* of *them* alone might have Credit to rent 10 *l.* a Year. But this *Evan Hughes* had such Credit: And *that* is the Principle which the Act goes upon.

There must be a *Residence of* 40 *Days in the Parish*, in order for this Man to gain a Settlement: But he *may let out Part*, if he thinks proper.

Mr. Justice ASTON concurred, most clearly. He needs not *reside* upon *any* Part of the Tenement he takes: It is enough if he resides *in the* PARISH. He was extremely clear in the present Case. And as to *Fraud*——If there be Fraud it must be *found* so: We can *not intend* it here.

Ten Pounds a Year being stated as the *Value* of the Tenement, it has been held sufficient; though the Man *paid* a Rent that was somewhat *less* than 10 *l.* a Year. This, I think, was in the Case of *Rex* v. *Inhabitants of Weston*.

The

* *V. ante*, pa. 311, 313, 400. The same Case (as I suppose is here meant) cited and allowed.

† *V. ante*, No. 128, pa. 398.

The Under-Tenants do *not* take a Tenement of the yearly Value of 10*l.* Therefore they do not hereby gain a Settlement.

LLANDVERRAS *and* NORTHOP.

Mr. Juſtice HEWITT alſo concurred. The * Certificate-Act confirms this Opinion: The Words are "Unleſs he ſhall really "and *bonâ fide take a Leaſe* of a Tenement of the yearly Value of "ten Pounds." The *Credit* is the Ground the Act goes upon; a Perſon's having Credit ſufficient to *hire* a Tenement of that Value. And this Man appears to have had ſuch Credit. By the Act of 13 & 14 *C.* 2. *c.* 12. the coming to ſettle in a Tenement of not leſs than 10*l. per Ann.* Value gains a Settlement, *after* 40 Days Reſidence in the *Pariſh*.

* *V.* 9 & 10 *W.* 3. *c.* 11.

Lord MANSFIELD—obſerved that this Objection tends to *narrow* Settlements; whereas they ſhould rather be *enlarged*.

Per Cur. unanimouſly—

RULE DISCHARGED: And ORDER *of Seſſions* AFFIRMED†.

† *Vide pag.* No. 235. S.P.

NOTE—The Caſe was *imperfectly ſtated*, upon the Order of Seſſions: But the Counſel for *Northop* admitted that the Man *never occupied* more than the 40*s.* a Year; having *immediately* let off 8*l.* a Year (the Reſidue) to other Perſons. On the other Hand, the Counſel for *Llanderras* admitted that he reſided *above* 40 Days upon the 40*s. per Ann.* Part. And the Parties *agreed* to a *perfect* State of the Caſe. To which the Court had no Objection; *provided* it *were managed ſo that it ſhould appear* that there *was* ſuch an Alteration made in the State of the Caſe: Otherwiſe, the Opinion of the Court would appear, upon the *Records* of the Court, to have been given upon a *different* Caſe from that on which they ſhould *really* give it. It was therefore agreed that it ſhould be made *Part* of the *Rule*, "That *by Conſent* of "Counſel it was *admitted* that *Evan Hughes*, Father of the "Paupers *reſided above forty Days* on *Part* of the Tene-"ment; *which Part* was of the yearly Value of 40*s. only*; "and that he did, *immediately* after his taking the ſaid Te-"nement, LET *the Reſt* and Reſidue thereof to *Under-"tenants*, WITHOUT *reſiding* thereupon at all himſelf."

Hilary Term

7 Geo. 3. 1767.

No. 185. Rex *v.* Inhabitants of St. Matthew's Bethnal Green.

Tuesday 3d *Feb.* 1767.

A voluntary Contribution, *yearly*, of divers of the Inhabitants of a Pariſh, is a *public Charity*, within the Stat. 8 *Ann. c.* 9. *ſ.* 40. And taking a Houſe, of the VALUE of 10*l. per Annum*, for Part of a Year, will gain a Settlement, though the RENT of it be *leſs*.

TWO Juſtices made an Order for the Removal of *Mary Fell* Widow and her five Children, that is to ſay, *Mary* aged 11 Years, *Elizabeth* aged 9 Years, *John* aged 7, *James* aged 4 Years, and *Anne* aged 5 Months, from *St. Matthew's Bethnal Green* to *St. Botolph's Aldgate:* And the Seſſions, upon an Appeal, quaſhed that Order.

The Order of Seſſions ſtates the ſpecial Caſe——*John Fell*, the Huſband of the Pauper *Mary*, and Father of the Pauper-Children *Mary*, *Elizabeth*, *John*, *James* and *Anne*, was brought up at the *Charity-School* of the Pariſh of *St. John Wapping* in the County of *Middleſex*; and in the Year 1747, was *bound Apprentice* by *Indenture* to *John Rudrupp*, a Blackſmith, for 7 Years; and ſerved his whole Time as Apprentice, under ſuch Indenture, with the ſaid *John Rudrupp* his Maſter, *in the ſaid Pariſh of* ST. BOTOLPH *without Aldgate*, in the County of *Middleſex:* And at the Time of his being put Apprentice, the Sum of *five Pounds* was *inſerted in the ſaid Indenture* as paid, and was *actually then paid* to the ſaid *John Rudrupp*, in Conſideration of his taking the ſaid *John Fell* to be his Apprentice, OUT OF *a voluntary yearly* CONTRIBUTION OR SUBSCRIPTION of divers of the Inhabitants of *St. John Wapping* aforeſaid, for the Purpoſe of putting out Boys and Girls Apprentices, brought up at the Charity School of the ſaid Pariſh of *St. John Wapping*. That there are annually elected, by the ſaid Contributors or Subſcribers, four Truſtees to manage the ſaid Charity, and a Treaſurer. That a Number of Boys and Girls are every Year bound out by the ſaid Truſtees of the ſaid Charity, as Apprentices; and Part

of

of the ſaid Charity-Money is advanced with ſuch Apprentices, by ſuch Treaſurer, by the Order of the Truſtees of the ſaid Charity for the Time being: And that the ſaid *John Rudrupp received the ſaid five Pounds* mentioned in the ſaid Indenture, from the Truſtees or Treaſurer of the ſaid Charity. That the ſaid Indenture of Apprenticeſhip *was* NOT *ſtamped* with any Stamp denoting Sixpence in the Pound to have been paid by the ſaid Maſter for every Pound of the ſaid five Pounds ſo paid to the ſaid *John Rudrupp* as aforeſaid. That the ſaid *John Fell*, in the Year 1754, hired a Dwelling-houſe in the Pariſh of ALDGATE *within* the County of the City of *London*, of one *William Wallis*, for five Months, during the Remainder of a Term the ſaid *Wallis* had therein; and for which, the ſaid *John Fell* agreed to pay the ſaid *William Wallis* the Sum of *four* Pounds: And the ſaid *John Fell* came, with his Family, to ſettle in the ſaid Houſe, and remained in the ſame the ſaid five Months and a ſhort Time over. And the ſaid Houſe was, at ſuch Time of the ſaid *John Fell's* taking and entering on the ſame, WORTH, *to be let*, TEN *Pounds by the Year*.

ST. MATTHEW'S BETHNAL GREEN *and* ST. BOTOLPH'S ALDGATE.

The Seſſions allow the Appeal, and vacate the Order of Removal, and order the ſaid poor Woman and her ſaid Children to be ſent back to *St. Matthew's Bethnal Green*.

On *Thurſday* 20th *November* laſt, Mr. *Lane* moved to quaſh this Order of Seſſions, and affirm the original Order.

He made two Queſtions——

1ſt, Whether a Settlement was gained *by the* APPRENTICESHIP: For as it was a CHARITY-*Binding*, and the Money being paid out of a Charity, it may be queſtioned "whether it was *neceſſary* that "the Indenture ſhould be *ſtampt*. *V.* 8 *Ann. c.* 9. *ſect.* 39."

As to Stamping Indentures, *Vide ante*, No. 48, 69, 80, 120.

2d, Whether a *Taking for five Months*, paying *only* 4 *l.* could be deemed a Taking of a Tenement of 10 *l. per Annum Value*; when 4 *l.* for five Months is *not equivalent* to 10 *l.* for a Year.

As to the ſecond Point, *Vide ante*, No. 151, 178. *poſt*. No. 260.

THE COURT *gave him a* RULE *to ſhew Cauſe*.

Mr. *Stowe* and Mr. *Bearcroft* now ſhewed Cauſe againſt quaſhing the Order of Seſſions, and affirming the original Order. They argued, on Behalf of *St. Botolph's without Aldgate*,

1ſt, That it was a Doubt whether this could be deemed a PUBLIC *Charity*, within the Act; becauſe it is *not a permanent* Charity.

2dly, That it was *not neceſſary* that he ſhould *occupy* for a Year: It is enough, that it is of the *yearly Value* of 10 *l.* And that he occupied

St. Matthew's Bethnal Green and St. Botolph's Aldgate.

cupied it *above forty Days*; which brings it within 13 & 14 *C.* 2. *c.* 12. *sect.* 1. and makes it a Settlement in *Aldgate* Parish.

However, it is sufficient for us, if we can shew that the Paupers were *not settled in St. Botolph's without Aldgate; to which Parish*, the two Justices have removed them.

They cited *Rex* v. *Inhabitants of Shenston* *, *M.* 32 *G.* 2. The Case of *South Sydenham* and *Lamerton*, in 1 *Strange* 57. Another between the Parishes of *Southwold* and *Yoxford* †, 2 *Strange* 1127. And *Rex* v. *Inhabitants of Llandverras* ‡, in the last Term.

Sir *Fletcher Norton* and Mr. *Lane*, *contra*, (for *St. Matthew's Bethnal Green*) insisted

1st, That the Pauper *gained* a Settlement in *St. Botolph's without Aldgate*, by *serving an Apprenticeship* there: And

2dly, That he did *not* gain one in the Parish of *Aldgate within*, by *taking a House* there.

1st Point——This Case falls *within the Proviso and Exception* in the Stamp Act of 8 *Ann. c.* 9. *sect.* 40. "That nothing in that Act "shall be construed to extend to charge any Master or Mistress with "the Payment of any of the said Duties, in respect of any Money "by him or her received with any Apprentice or Servant who shall be "put or placed out at the *common or public Charge of any* PARISH "*or* TOWNSHIP, *or by or out of* ANY PUBLIC *Charity*; or to re-"*quire the Stamping with any such new Stamp* as aforesaid, of any "Indenture, Articles, Covenant or Contract relating to SUCH Ap-"prentice or Servant as last mentioned."

So that *no* Stamp-Duty was to be paid in *this* Case, nor the Indenture to be stampt with any new Stamp. Therefore he *gained* a Settlement under the unstampt Indenture. This is a *public* Charity: And a *public* Charity is put in Opposition and Contradistinction to *private* Charities. The Act ought to be construed *liberally* for Apprentices who have fairly served an Apprenticeship.

2d Point——The *Criterion* is the ABILITY of the Person *to hire a Tenement of* 10*l. a Year Value*. The State of this Case does *not* shew that this Man *had* such a Degree of Credit as the Statute requires.

They agreed to the Cases of *Shenston*, and of *Llandverras*; and "that it was not necessary to reside the *whole Year*;" and also, "that if the Value is 10*l.* a Year, the Person is irremovable within "the 40 Days." But here it is expressly found that he paid only 4*l.* for five Months: And therefore it was *not* of 10*l.* a Year Value to him, WHILST *he rented it*; though it might be so at some *other*

2 Season

* *V. ante*, No. 149.

† *V. ante*, No. 47.

‡ *V.* the last Case, No. 184.

ST. MATTHEW'S BETHNAL GREEN *and* ST. BOTOLPH'S ALDGATE.

Seaſon of the Year: It might be rented by this Perſon at *ſuch* a Seaſon of the Year, as to be worth *very little*. So that this Man was *not* truſted with a Tenement of the *bona fide* Value of 10 *l.* a Year. Therefore 'tis not within the *true* Meaning of this Act of Parliament. The Caſes cited *do not come up* to the preſent Caſe.

Lord MANSFIELD was clear on both Points. After ſtating the Facts he declared his Opinion on each Point ſeparately.

1ſt Point. It is a *public* Charity, and a very laudable one. It is not neceſſary that it ſhould be a *permanent* Charity.

The Reaſon of the Diſtinction between a public and private Charity is obvious: A *private* one might be calculated to *evade* the Act; a *public* one can not be ſuppoſed to have been ſo.

This is a *public* Charity within the *Reaſon* and the *Letter* of the Act.

2d Point. We are concluded from treating this Tenement as being *under* 10 *l. per Ann.* Value, by the finding of the Juſtices; who have ſtated it as a poſitive Fact, "That at the TIME when he took "it, it *was* of the Value of 10 *l. per Annum*: It was then worth ſo "much, *to be let*." We are *not* upon the *Evidence* of the Value: If we were, perhaps this might come a little Matter ſhort of the Calculation, by about * *eight* Pence *per* Month. But the Juſtices have *concluded* us, by their Finding.

Clearly, the *Rent* is not material: It is the VALUE that is material. So is the Caſe of *South Sydenham* and *Lamerton*†.

Therefore I am clear on both Points.

§ *Mr. Juſtice* ASTON concurred on both Points.

The *Rent* only governs, *unleſs* the contrary appears.

Mr. Juſtice HEWITT concurred alſo, on both Points.

1ſt, This is clearly a *public* Charity.

2dly, The Caſes have been determined upon *right* Principles: The VALUE is the *Criterion*. The Act meant that the Taker of the Tenement ſhould be a Perſon of ſuch Circumſtances and of ſuch Notoriety and Ability as to be *truſted* with hiring a Tenement of the *Value* of 10 *l.* a Year.

Per Cur. unanimouſly——

RULE DISCHARGED: And
ORDER *of* SESSIONS AFFIRMED.

* 5 Months: 4 *l.* :: 12 Months: 9 *l.* 12 *s.*

† *V.* 1 Sir *John Strange* 57. and *Lucas's Reports* (10 *Mod.*) 388.

§ Mr. Juſtice *Yates* was abſent.

Eaſter

Easter Term 7 Geo. 3. 1767.

No Determination of this Sort.

Trinity Term

7 Geo. 3. 1767.

No. 186.

Rex *v.* Inhabitants of Taviſtock.

Wedneſday 8th *July* 1767.

An *Apprentice* may gain a Settlement, by ſerving 40 *Days*, in *another* Pariſh, with the Consent of the *Aſſignee* of the *original Maſter*. *Blac. Rep.* 635. S. C.

TWO Juſtices for the County of *Devon* made an Order for the Removal of *Roſamond Cock*, *Elizabeth* his Wife, *Elizabeth*, *Honor* and *John* their Children, from the Pariſh of *Taviſtock* in *Devonſhire* to the Pariſh of *Kelly* in the ſame County, as the Place of their laſt legal Settlement: But the laſt-mentioned Pariſh appealing to the Seſſions, they quaſhed that Order.

The Order of Seſſions ſtates the Caſe thus——The Pauper was *bound an Apprentice*, BY THE PARISH *of Lamerton*, to *Richard Rundle*; with whom he lived ſeveral Years *in that Pariſh*; and then *Rundle* TRANSFERRED *him*, BY ASSIGNMENT, to *John Prout* of the Pariſh of *Milton-Abbott*; with whom he lived *till* he was *twenty Years and a half* old; at *which* Time he offered his Service to *Thomas Maſon* of the Pariſh of *Kelly*. The ſaid *Maſon*, apprehending "that he was an Apprentice to *Prout*," ſent his two Sons to the ſame *Prout*, to know "Whether it were with *his Conſent* that *Cock* "the Pauper ſhould live with him." To which, *Prout* anſwered "with all his Heart: He might live with *Maſon* or any Body "elſe,

" elſe, PROVIDED *he performed his Agreement with* HIM; which " was, *to pay one Guinea a Year* during the Remainder of his Ap- " prenticeſhip." Accordingly, he *lived with Maſon in the ſaid Pariſh of* KELLY, for a *Year and upwards*. The Court of Seſſions being of Opinion " that he *gained* no Settlement thereby," did therefore vacate the ſaid Order of two Juſtices, which removed the Paupers from *Taviſtock* to *Kelly*. TAVISTOCK *and* KELLY.

A Motion had been made on the ſecond Day of this Term, by Mr. *Heath*, to quaſh this Order of Seſſions, and affirm the original Order: And the Court then gave him a

RULE *to ſhew Cauſe*.

Sir *Fletcher Norton* and Mr. *Thurlow*, on Behalf of the Pariſh of *Kelly*, now ſhewed Cauſe why this Order of Seſſions ſhould not be quaſhed; inſiſting that he did *not* gain a Settlement in *Kelly* for various Reaſons.

1ſt, He was a PARISH-*Apprentice*, and an *Infant*. Therefore he *could not himſelf conſent* to be transferred. And yet he could not be transferred *without* both his *own* Conſent, *and alſo* that of the *Juſtices*.

2dly, Neither, *if* he could, would it follow, " that he could live " in KELLY *as an Apprentice*, without the PRIVITY *of the* FIRST " *Maſter, Rundle*."

3dly, Nor does any *certain and poſitive Anſwer* appear to have been returned even from *Prout* (his ſecond Maſter) to *Maſon*. But admitting " that *Prout did* conſent," yet *Rundle's* Concurrence was alſo neceſſary. And there is *no* Conſent at all from *him*, either expreſs or implied, to *Cock's* ſerving *Maſon* in the Pariſh of *Kelly*. Therefore it cannot be *implied* that he acted *as* HIS *Apprentice* in the Service which he performed in the Pariſh of KELLY.

4thly, He could not gain a Settlement in *Kelly* by the Method of a *Hiring and Service*; becauſe the Indenture of Apprenticeſhip *continued:* Nor indeed is any Hiring and Service *ſtated*. So that *that* Method of gaining a Settlement is *quite* out of the Caſe.

Perhaps the Caſe of *Rex* v. *Inhabitants of Clapham* *, *P.* 20 *G.* 2. *B. R.* may be urged as an Authority againſt us. * *V. ante*, No. 91.

But the preſent Caſe differs from that. *Here*, the firſt Maſter (*Rundle*) aſſigned him to *Prout* of *Milton Abbott* (who, in Fact, was his Father;) and then he lived with *Maſon*, at *Kelly*. But he did

Tavistock and Kelly.

did not ſerve *in* Kelly with the *Conſent* of either *Rundle* or *Prout*. *Rundle* knew nothing of it: And *Prout* gave only a *conditional* Aſſent. What is ſtated is only a *Propoſition* made on one Side; and *not accepted, not acceded to*, on the other: Here is no Evidence "that it "was *agreed to*." It muſt be conſidered as *rejected* by *Prout*.

Mr. *Dunning*, *contra*, (for the Pariſh of *Taviſtock*, and againſt the Order of Seſſions.)

An *Aſſignment*, or a *Conſent* of an Apprentice's Maſter, is ſufficient to gain a Settlement in the Pariſh where he ſerves under ſuch Conſent. If *Prout*, the *Aſſignee* aſſented, it will *virtually include the Aſſent* of the *firſt* Maſter. This is *virtually* an Aſſent of *Both*.

It is totally *immaterial* whether the Guinea a Year was *paid, or no*.

Lord Mansfield interrupted Mr. *Dunning*, and ſtopt him from proceeding any further, thinking it a clear Caſe on *his* Side.

The only Queſtion is, "Whether *Prout conſented*." It is clear "that he *did* conſent:" And *his* Conſent included that of the *firſt* Maſter.

Mr. Juſtice Aston concurred, and cited the Caſe of *Rex* v. *Inhabitants of Eaſt Bridgeford* *, *Tr.* 13 *G.* 2. where a ſecond Aſſignment was holden good.

Mr. Juſtice Yates and *Mr. Juſtice* Hewitt were of the ſame Opinion with his Lordſhip and Mr. Juſtice *Aſton*.

Per Cur. unanimouſly——

Rule made absolute.

Order of Seſſions *quaſhed*:
Original Order *affirmed*.

* *Vide ante*, *pa.* 133. No. 43. See alſo *Doug.* 69. and the ſeveral Caſes referred to at the Bottom of *pa.* 16. and *particularly* No. 133, 174, 250.

Michaelmas

* Michaelmas Term 8 Geo. 3. 1767.

No Determination on this Subject.

* In this Term *Mr. Juſtice* HEWITT was appointed *Lord Chancellor* of *Ireland*, and created BARON LIFFORD of *Lifford* in the County of *Donegal*.

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* Hilary Term

8 Geo. 3. 1768.

* On the 27th of *January* 1768, *Edward Willes*, Eſq; his Majeſty's Solicitor General, kiſſed Hands on being appointed a Judge of the Court of *King's Bench*, in Succeſſion to Mr. Juſtice *Hewitt*, now Lord *Lifford*, and Lord Chancellor of *Ireland*.

Rex *v.* Inhabitants of Wooton St. Lawrence. No. 187.

Thurſday 4th *Feb.* 1768.

A CERTIFICATE, not properly *allowed* and *ſigned*, will not bind the Pariſh granting it.

TWO Juſtices made an Order for the Removal of *Thomas Pryor*, *Amy* his Wife, and their ſix Children, *viz.* *Mary* aged 14 Years, *Thomas* 11, *Hannah* 7, *John* 5, *George* 2 *Years*, and *James* aged 3 Months, from *Wooton St. Lawrence* to *Mitcheldever* in *Hants:* And the Seſſions, upon Appeal, quaſhed the ſaid Order as to *Mary Pryor* and *Thomas Pryor*, the Children, for *Inſufficiency* (and *not*

WOOTON ST. LAWRENCE *and* MITCHELDEVER.

not on the Merits,) there being *no Adjudication* therein as to *their* Settlement. [In *Fact*, there was none as to *any* of the Children or the *Wife*.] And then they ſtate the following

Special Caſe——And it appearing unto them, That *Thomas Pryor*, the Huſband of the ſaid *Amy* and Father of the ſaid *Hannah*, *John*, *George* and *James Pryor*, was, at *Michaelmas* about 19 Years ago, (being then unmarried and having no Child or Children,) hired as a Servant for a Year, at 8 *l. per Annum*, to *John Archer* of *Mitcheldever*. That he entered into the Service, a few Days after the Hiring. That, from the Hiring, he conſidered himſelf a Servant of the ſaid *John*. That about *Chriſtmas*, he *ran away* from his Maſter, and continued *abſent for four or five Days*. On his Return, the Maſter ſaid "He might go about his Buſineſs; he was no Ser-"vant of his;" and would not receive him: But, however, *on his conſenting to make an Abatement* of a *Shilling* or *Sixpence* in his Wages, his Maſter *continued him in his Service*. That the Pauper accordingly *returned to* and *continued in the Service* till the *Michaelmas* following; when he received 8 *l. all but Sixpence*; the Maſter declaring, "that he was *well ſatisfied* with him;" and which was more Wages than the ſaid *Thomas* expected. That the Pauper ſoon afterwards married *Amy*; and being refuſed Admittance into the Pariſh of *Sherborn St. John* without a Certificate of his Settlement, applied to the Pariſh-Officers of the ſaid Pariſh of *Wooton St. Lawrence*; who *gave him a common printed Form of a* CERTIFICATE (acknowledging "that the ſaid *Thomas*, his Wife, and Children "were ſettled in the ſaid Pariſh of *Wooton St. Lawrence*,") under the Hands and Seals of the Majority of the Pariſh-Officers of the ſaid Pariſh of *Wooton St. Lawrence*, and atteſted by two Witneſſes: But the Blanks for the *Allowance of Juſtices were not filled up*, and NO NAME OF ANY JUSTICE *ſigned thereto*. That there was *no Proof of the Delivery* of the ſaid common printed Form to the Pariſh-Officers of *Sherborn St. John*: But from the Time of his returning to *Wooton St. Lawrence*, the Pariſh of *Wooton St. Lawrence had relieved him, to this Time*. This Court [of Seſſions] is of Opinion and doth adjudge "that the ſaid recited Order, as to the ſaid "*Thomas Pryor* and *Amy* his Wife, and *Hannah*, *John*, *George* and "*James* their Children, ought to be quaſhed on the *Merits*:" And they quaſh it accordingly. And they order the Churchwardens and Overſeers of *Wooton St. Lawrence* to pay to the Churchwardens and Overſeers of *Mitcheldever* the Sum of 21. 5*s*. being Money

Money laid out and expended by them in the Maintenance of the Paupers, ſince their Removal. WOOTON ST. LAWRENCE and MITCHELDEVER.

On the laſt Day of the laſt Term, Mr. *Impey* moved to quaſh this Order of Seſſions, and to affirm the original Order. He objected to the Order of Seſſions, in two Reſpects.

1ſt Objection—The Pauper gained a Settlement in *Mitcheldever*, by this Service in *Mitcheldever* under a Hiring for a Year.

2d Objection—He had *none* in *Wooton St. Lawrence*; becauſe the *Certificate* was NOT SIGNED by any *Juſtice of Peace*. He cited 1 Sir *John Strange* 402, *Barleycroſt* and *Coleoverton* Caſe.

RULE *to ſhew Cauſe*.

* Mr. Solicitor General, Mr. *Kirby*, and Mr. *Miſſing* now ſhewed Cauſe againſt quaſhing this Order of Seſſions. They gave up the Certificate AS *a* CERTIFICATE *regularly executed under the Certificate-Acts*: But they alledged it to be a *good* Certificate at COMMON *Law*, before 8 & 9 *W.* 3. as it was a full Acknowledgment "that "the Pauper was their Pariſhioner." And they argued, that the Pariſh of *Wooton St. Lawrence* having all along *ſubmitted* to it, they are CONCLUDED *from diſputing it*. This Admiſſion would be *Evidence* againſt them, under 3 *G.* 2. *c.* 29. to prove "that the Church-"wardens and Overſeers of the Pariſh ſigned it:" And the Pariſh ought to be bound by the *Act of their Overſeers*, who are of their own chooſing. *Many Acts* or even *Omiſſions* of the Pariſh-Officers may *bind* their Pariſh: But here is a ſolemn Acknowledgment under their Hands and Seals, "that the Paupers *were ſettled in Wooton St. Lawrence*."

* *John Dunning*, Eſq; of the *Middle Temple*, kiſſed Hands for this Office, on 27th *January* 1768. *V. ſupra*, pa. 581.

The Facts ſtated do *not* conclude *againſt* the Determination which the Seſſions have made: And therefore this Court will *ſuppoſe* that they have adjudged *right*; and that they have *properly* quaſhed the Order of the two Juſtices.

The Caſe in 1 *Strange* 402, between the Pariſhes of *Barleycroſt* and *Coleoverton*, does not apply to this: The preſent Caſe is *not* within the Certificate-Act, as *that was*.

Sir *Fletcher Norton*, *contra*——

Lord MANSFIELD ſtopt him from proceeding; as not being neceſſary. A Certificate can not conclude the Pariſh, unleſs *properly ſigned*. The Certificate-Act *ſpecifies* certain *Checks* and *Guards* upon Certificates. The Juſtices are *not* obliged *miniſterially* to allow and ſign a Certificate: They are *not* bound, at *all* Events, to allow and

WOOTON ST. LAWRENCE *and* MITCHEL-DEVER.

sign it. They have a *Diſcretion* to allow it; or *not* to allow it, if it be liable to Objection. The Act requires a *concluſive Certificate* to be under the Checks and Guards therein particularized*. *This* Certificate *wants* them. Therefore it is *no* Certificate within this Act. ——And if it is not a Certificate within the Act, it *can not conclude the Pariſh*.

* *V.* 8 & 9 *W.* 3. *c.* 30. *ſect.* 1.

It is *no Conſequence*, that becauſe the Pariſh-Officers may bind their Pariſh in *ſome* Things, therefore they may in *all*.

If Certificates *not within* the Act of Parliament were to be allowed as *Evidence* and *Preſumption*, it would open a Door for great Litigation before the Juſtices, concerning the *Degree* of ſuch Evidence and Preſumption: Which would be infinitely inconvenient; For it would greatly heighten the *Expence* of Pariſhes, (which is enormouſly great already) in carrying on theſe Diſputes about the Settlements of the Poor, with the *Money* which *ought to ſupport* them.

Mr. Juſtice YATES and *Mr. Juſtice* ASTON agreed it to be a very plain Caſe.—It muſt be a Certificate *purſuant* to the Certificate-Act: Or elſe it can not conclude the Pariſh that gives it.*

* *Vide poſt.* No. 240. S. P.

Per Cur.——

ORDER *of Seſſions* QUASHED, *Except as to the two eldeſt Children.*

The Rule was thus drawn up—

That the ORDER *of* SESSIONS made for quaſhing the original Order, be *quaſhed*; except as to *Mary* and *Thomas*, the Children: And that the ſaid ORIGINAL ORDER be *affirmed*; except as to the ſaid *Mary* and *Thomas*, the Children.

No. 188. Rex *v.* Inhabitants of Great Bedwin.

Monday 8th *Feb.* 1768.

ORDER for the Removal of a *Widow*, upon the Examination of her *deceaſed Huſband*, QUASHED for Want of an Adjudication.

TWO Juſtices of *Surrey* made an Order for the Removal of *Mary Edwards*, WIDOW of *William Edwards lately deceaſed*, and her three Children (naming them and ſpecifying their Ages) from *Mitcham* in *Surrey* to *Great Bedwin*. Their Order recites the Complaint made to them by the Churchwardens and Overſeers of

Mitcham;

Mitcham; and proceeds thus——"And whereas, *upon due Exami-* "*nation and Inquiry* made into the Premiſſes *on the Oath of the ſaid* "WILLIAM EDWARDS DECEASED, and other Circumſtances, it "appears to Us, and We accordingly adjudge that the ſaid *Mary* "*Edwards* and her three Children (naming them) *are* become "chargeable to the Pariſh of *Mitcham*;" And they adjudge that the laſt legal Settlement of the ſaid *William Edwards* the Father, DECEASED, *is* in *Great Bedwin*; and remove the Paupers thither accordingly. This original Order was confirmed, on Appeal, by the Quarter-Seſſions of *Surrey*.

On *Saturday* 14th of *November* laſt, Mr. *Baynham* moved to quaſh theſe Orders.

His Objection (and his only one) was that the Order of the two Juſtices appeared to be bad upon the *Face* of it; as being expreſsly ſtated by them, to be *made upon the Examination of a Perſon* DECEASED: Which he alledged to be an Inconſiſtency and Abſurdity.

THE COURT gave him a Rule to

SHEW CAUSE.

On ſhewing Cauſe—Mr. *Dunning*, Solicitor General who ſhewed Cauſe, ſaid The Fact was "that the Man died *between* the Exami- "nation and the Making of the Order:" So that the Order was neither inconſiſtent nor abſurd. However, the Objection NOW inſiſted upon by Mr. *Baynham* was "That there was NO ADJUDICA- "TION in the original Order."

And upon *this* Objection

The RULE *was made* ABSOLUTE *for* QUASHING *the* ORDERS.

N. B. I ſhould not have inſerted this Caſe, but for the Reaſon frequently beforementioned; namely, that every Body may know *upon what Foot* it was determined, in caſe it ſhould ever be cited as an *Authority*.

Eaſter

Eaſter Term

8 Geo. 3. 1768.

No. 189.

Rex *v.* Inhabitants of Gainſborough.

Saturday 23d *April* 1768.

An *Indenture* of *Apprenticeſhip*, for leſs than 7 Years, and uninrolled, is not *void*, but only *voidable*: And Service under it for 40 Days, *at different Times*, will gain a Settlement.

TWO Juſtices made an Order for the Removal of *Chriſtopher Myers* and *Martha* his Wife, and *Robert*, *Mary* and *Elizabeth* their Children from *Gainſborough* in *Lincolnſhire* to *Weſt-Stockwith*: And, upon an Appeal, the Seſſions quaſhed that Order.

Special CASE ſtated——*By Indenture* or Writing indented, bearing Date the firſt Day of *June* 1756, the ſaid *Chriſtopher Myers*, (Son of *Robert Myers* of *Epworth* in the ſaid County of *Lincoln*) with the *Conſent of his Mother*, did put himſelf *Apprentice* to *Robert Burſall* of *Weſt-Stockwith* aforeſaid Mariner, to learn his Art and to ſerve him as an Apprentice from the ſaid firſt Day of *June* 1756, FOR FOUR YEARS then next enſuing: And the ſaid *Robert Burſall* did thereby covenant to pay yearly to the ſaid Apprentice, the firſt Year 2 *l.* the ſecond Year 3 *l.* the third Year 3 *l.* 10 *s.* and the fourth and laſt Year 4 *l*; and to teach the ſaid Apprentice the Art of a *Mariner*; and to find him ſufficient Meat Drink Waſhing and Lodging and all other Neceſſaries during the ſaid Term, (Wearing-Apparel excepted.) The ſaid *Chriſtopher Myers* was *then of the Age of* 17 *Years*. The ſaid *Indenture was* NOT INROLLED *in the Town where the ſame Apprentice was then inhabiting*, or in the *next Town Corporate* to the Habitation of ſuch Apprentice, purſuant to the Statute of 5 *Eliz. c.* 5. or with the *Collector of the Cuſtoms*, purſuant to the Statute of 2 & 3 *Ann. c.* 6.

The ſaid *Chriſtopher Myers* ſerved the ſaid *Robert Burſall* as his Apprentice during *three Years and a Quarter* of the ſaid Term of four Years: And then the ſaid *Robert Burſall* ſold his Ship; and he and his ſaid Apprentice parted by Conſent.

The ſaid Apprentice ſerved his Maſter moſtly on Board *at Sea*; but *inhabited* in the Pariſh of *Weſt-Stockwith* aforeſaid the *firſt* 14 *Days*

GAINSBOROUGH *and* WEST-STOCKWITH.

Days or upwards, and ſo many Days after, *at many different Times*, as *with* the ſaid 14 Days amounted to *upwards* of 40 Days in the *whole*; and *in no other Pariſh* for 40 Days, during the ſaid Term.

The Seſſions quaſhed the Order, for the Reaſon above ſtated; ſubject to the Opinion of his Majeſty's Court of *King's Bench*, "Whether the ſaid Indentures, being *for* FOUR *Years only*, and *not* "*inrolled* as above, be *void*, or not: And whether the Inhabiting "in *Weſt-Stockwith* as aforeſaid be SUCH *an Inhabiting* as will *gain* "*a Settlement there.*"

On *Wedneſday* 25th of *November* laſt, Sir *Fletcher Norton* moved to quaſh this Order of Seſſions and affirm the original Order. 1ſt, For that the Seſſions were miſtaken about 5 *Eliz. c.* 5. and alſo about 2 & 3 *Ann. c.* 6. *neither* of thoſe Acts making the Indenture *void*, as he alledged. And 2dly, That the Continuance for 40 Days needs not be *ſucceſſive:* It is enough, if it be 40 Days in *all.*

He had a

RULE *to ſhew Cauſe.*

Mr. Solicitor General *Dunning* now ſhewed Cauſe againſt quaſhing the Order of Seſſions, and conſequently againſt a Settlement being gained by this Apprenticeſhip, in *Stockwith.*

He did not pretend that the 40 Days Service ſhould be a *continued* Service. But "whether *ſuch* a Service as *this* is, ſhall gain a Set-"tlement," is a Queſtion: For this Indenture has *not* the *Requiſites* made neceſſary by 5 *Eliz. c.* 5. *ſect.* 41. And all *other* Indentures are made "VOID *to* ALL *Intents and Purpoſes.*" He cited the Caſe between the Pariſhes of *Cuerden* and *Leyland*, in 2 *Str.* 903 *.

Sir *Fletcher Norton*—*contra*—for quaſhing the Order of Seſſions.

1ſt, As to its *not* being an Indenture *for ſeven Years*——I agree it to be *voidable:* But it is NOT *abſolutely* VOID †.

2d, That the Inhabitancy was not 40 Days *ſucceſſively*——It has been determined over and over, "That an Inhabitancy for 40 "Days § *ſucceſſively* is *not* neceſſary."

3d, As to the *Inrollment*——The Act of 5 *Eliz. c.* 5. *ſect.* 12. provides "that Maſters and Owners of Veſſels, &c. may take and "keep Apprentices, to be bound for ten Years or under. And every

* It is alſo in *Seſſions Caſes*, Edit. 1750. Vol. 2. pa. 167. No. 134.

† This Point was accurately diſcuſſed by Lord *Hardwicke*, and fully ſettled, in the Caſe of *The King* and *The Inhabitants of St. Nicholas in Ipſwich*, *ante*, No. 28. pa. 92 to 97. See alſo No. 84. pa. 250.

§ *V. ante*, No. 40, No. 42, and No. 82, *Poſt.* No. 258. *Doug.* 633.

"ſuch

GAINSBOROUGH and WEST-STOCKWITH.

"such Apprentice being above seven Years of Age, to be bound, "&c: So THAT the same Covenant or Bond of Apprenticeship be "made by Writing indented, and *inrolled* in the *Town* where the "same Apprentice shall be then *inhabiting*, if it be a *Town Corpo-* "*rate*, and *if* the Town be *not incorporate*, then to be inrolled in "the *next Town incorporate* to the Habitation of every such Appren- "tice."

Now the Meaning of that Provision ("that Apprentices so taken "for *ten* Years shall be &c."—) is for the *Benefit* of the *Appren-* *tice:* It is a *Check* upon the *Master*. And therefore the Apprentice so bound a *Minor* to a Master of this Sort shall not be in a *worse* Condition than any *other Apprentice*, *only* because he is bound to a *Mariner*.

But there is *no such Provision* in the Act of 5 *Eliz.* Chapter *five*, as Mr. Solicitor General cites from Section 41, of that Act. It is only in 5 *Eliz. c.* 4*. and not in 5 *Eliz. c.* 5; upon which latter Act, (of 5 *Eliz. c. five*) *this* Case depends.

* *V. ante*, pa. 93.

Lord MANSFIELD——Then there is nothing in the Case. The Justices have done wrong. It would be very hard that the *Apprentice* should suffer for the MASTER's *Neglect*.

I think the Cases have gone *too far* upon the *Stamp*-Act: It is *Summum Jus*; and has been considered *strictly* on Account of the *Preservation of the* DUTIES *payable to the Crown*.

Therefore the Rule must be made absolute, for quashing the Order of Sessions.

Order of Sessions QUASHED:
Original Order AFFIRMED.

No. 190. Rex. *v.* Inhabitants of St. Lawrence in Winchester.

Wednesday 4th *May* 1768.

TWO Justices made an Order for the Removal of *Mary Gradidge* Widow and *Mary* her Daughter from the Parish of *St. Maurice* to that of *St. Lawrence*, both in *Winchester:* And the Sessions, upon an Appeal, confirmed that Order.

A *Parishioner* is a competent Witness to charge his *own* Parish. And two *distinct* Tenements taken at *different* Times, and lying in *several* Parishes, make a Settlement, where the Pauper lives.

The Sessions-Order stated the Case thus——That *Mary Gradidge*, the Pauper, was married to one *Richard Gradidge* lately deceased; by whom she had a Daughter *Mary Gradidge*, the other Pauper mentioned in the Order.

That one *Charles Goulding*, a *Parishioner* in the Parish of *St. Lawrence* and *paying to Church and Poor there*, was subpœnaed and

ſworn on the Part of the Pariſh of St. Maurice. That the ſaid *Charles Goulding* then refuſing to be examined, it was objected "that *he* "*ought not to be compelled to give Evidence which might tend to* "*charge the Pariſh.*" That the Court *over-ruled* the ſaid Objection *. Whereupon, the ſaid *Goulding was examined*; and proved "That the ſaid Pauper *Richard Gradidge*, at *Michaelmas* 1764, be- "ing then unmarried and having no Child or Children, was *hired* "*by him for a Year, and ſerved till Michaelmas following.*"

ST. LAWRENCE *and* ST. MAURICE.

That *no other Evidence* was given of the ſaid Hiring and Service; nor has *Gradidge* done *any other Act, to gain a Settlement in the Pariſh of St. Lawrence.*

That the ſaid *Richard Gradidge rented a Tenement* of one *Henry Warne*, in the Pariſh of *Hurſley* in the County aforeſaid, *for a Year from Lady-day* 1766, at 3*l.* 10*s. per Annum*; but reſided therein *five or ſix Weeks only*, and *then quitted it.* That the ſaid *Richard Gradidge tendered the Key* of the ſaid Tenement *to the ſaid Henry Warne:* Which he *refuſed to accept.* That *Gradidge* thereupon left it with a Neighbour, *before Midſummer-day then next*, for the ſaid *Warne* to take it when he thought proper.

That *on the ſaid Midſummer-day*, Gradidge *took a Tenement* in the Pariſh of ST. MAURICE in the County aforeſaid, at the Rent of *nine* Pounds a Year; and *on the ſame Day entered* into Poſſeſſion thereof, and *reſided thereon above* 40 *Days*, *before the Key* of the ſaid Tenement in *Hurſley* was *received by the ſaid Warne:* That he did not receive it till the *ſixteenth* of *Auguſt* following.

That the ſaid *Warne let* the ſame to one *John Thompſon*, before *Michaelmas-day* 1766: And that *Thompſon* was to *enter into Poſſeſſion* thereof *on* the ſaid *Michaelmas-day.*

The Seſſions were of Opinion "that the Order of the two Juſtices "ought to be confirmed;" and confirmed it accordingly.

A Motion having been made to quaſh theſe Orders; and thereupon, a RULE *to ſhew Cauſe.*

Mr. *Dunning*, Solicitor General, Mr. *Impey*, and Mr. *Kerby* now ſhewed Cauſe why they ſhould not be quaſhed.

Two Objections had been made to theſe Orders; 1ſt, That the *Witneſs* brought to prove the Settlement in *St. Lawrence's* was *incompetent*; and *his Evidence* ought *not* to have been taken: 2dly, That *Gradidge* had gained a *ſubſequent* Settlement in *St. Maurice's.*

* *Cox* v. *Whalley*, Sittings after Michaelmas Term, 20 Geo. 3. ſame Objection over-ruled.

St. Lawrence and St. Maurice.

To theſe two Objections, they anſwered——

1ſt, As to the *Competency of the Witneſs to give this Evidence*— The Objection made to it is *new*, and can not have much *Weight*: He did not give this Evidence *for* his own Pariſh, but *againſt* it: Neither did he *perſiſt* in refuſing to give it. He *was* examined; and gave Evidence againſt his own Pariſh of *St. Lawrence*.

2dly, *Gradidge* gained *no* ſubſequent Settlement in *St. Maurice's*.

It is not obvious, upon *what Grounds* it has been eſtabliſhed "that "if a Perſon hires a Tenement in *two* different Pariſhes, amounting "to 10*l. per Annum in the whole*, he ſhall gain a Settlement in *that* "of the two Pariſhes *in which he reſides*."

But admitting that to be a ſettled Point, yet ſtill, in order to gain a Settlement, he ought to be the *Joint*-Occupier of *both* Tenements *within* the SAME PERIOD: Whereas here, this *Richard Gradidge* did *not* occupy *both jointly within the* SAME PERIOD: For the *firſt* Contract was *diſſolved*, from *Midſummer* at leaſt, if not ſooner. The Landlord *took back the Key*, on the 16th of *Auguſt*: Which *relates back* to the Abandonment *ſame Time* BEFORE *Midſummer*. If ſo, the Queſtion is at an End: For the Pauper did not become Tenant of the *other* Tenement, in *St. Maurice's*, TILL *Midſummer*. He had *abandoned* the Tenement in *Hurſley*, ſome Time *before* he entered into and occupied that in *St. Maurice's*; which was only AT *Midſummer*: And though he occupied this latter forty Days before *Warne accepted the Key* of the Tenement in *Hurſley*; yet the Acceptance of the Key on the 16th of *Auguſt relates* to the Tenant's prior Abandonment of that Tenement five or ſix Weeks after *Lady-day*.

Here was *no actual, viſible* Occupation of both Tenements *at the ſame Time*. Conſequently, the Pariſh could have *no Notice* of his occupying of a Tenement of 10*l. per Annum*. The conſtruing this to gain a Settlement in *St. Maurice's*, would *evade* the Act: The very Ground of this Kind of Settlement is its *amounting to* NOTICE *to the Pariſh*. But here was a *Want of Notoriety*. So that the Ground *fails* in this Caſe.

It would be unreaſonable that a Man who rents one Tenement in *Northumberland*, and another in *Cornwall*, ſhould gain a Settlement in the Pariſh where he *reſides*, which Pariſh *knows nothing of the former Renting*. And there *may* be *many* ſmall Tenements formerly hired in many different Counties, or in Places of public Reſort, at great Diſtances from each other; which can ſcarce poſſibly, at leaſt not at all probably, ever *come to the Knowledge* of the Pariſh where the Pauper hires the *ſecond* Tenement.

Therefore

Therefore the Order of the two Juſtices and the Order of Seſſions are both good, and ought to be affirmed. ST. LAWRENCE *and* ST. MAURICE.

Sir *Fletcher Norton* and Mr. *Peſcod, contra*, for the Rule.

Lord MANSFIELD ſtopt Sir *Fletcher*. He firſt took Notice of the *Expence* of this Litigation; obſerving that there were three Counſel on one Side; two, on the other: And then he declared his Opinion.

1ſt, As to the *Competency* or *Incompetency* of the Witneſs—It was a *ſcandalous* Thing to *make* the Objection. In Caſes of *this Kind*, it is reaſonable that the *Truth* of the Facts ſhould be *fairly* inquired into: And this was a ready Way to come at it.

2dly, As to the Settlement by taking a Tenement of 10*l.* a Year ——Here is a Contract for a Year in *Hurſley not diſſolved*; nor *could* it be diſſolved: The Landlord *refuſed* to accept the Key: And he did not receive it at laſt, *till* the Middle of *Auguſt*; which was *ſubſequent* to the *Hiring the ſecond Tenement*.

Mr. Juſtice YATES——As to the *Competency of the Witneſs*—His Evidence was *againſt* his Intereſt; not *for* it.

2dly, As to the Settlement—It is clear that he held both Tenements *together*. The former Contract was *not* at an End: The Landlord might have brought his *Action for the Rent*.

Mr. Juſtice ASTON and *Mr. Juſtice* WILLES were of the ſame Opinion "that the former Contract was *not diſſolved*."

Per Cur. unanimouſly——

BOTH ORDERS QUASHED.

Vide ante, No. 13, 63. S. P. *accord*.

Trinity Term

8 Geo. 3. 1768.

No. 191. **Rex *v.* Inhabitants of East Donyland.**

Thurſday 16th *June* 1768.

APPEAL, from an Order of *Burrough* Juſtices, muſt be to the *County* Seſſions.

TWO Juſtices of Peace for the BURROUGH of *Colcheſter* made an Order to remove *John Grimwood*, *Jeremiah Grimwood*, and *Elizabeth Grimwood*, the Children of *Jeremiah* and *Elizabeth Grimwood* both deceaſed, from *St. Giles's* in *Colcheſter*, to *Eaſt Donyland* in *Eſſex:* And on Appeal to the Quarter-Seſſions of the BURROUGH, this Quarter-Seſſions of *the* BURROUGH *of Colcheſter*, upon hearing the Debates and Proofs upon Oath on both Sides; and it appearing to them, "That the ſaid *John Grimwood*, *Jeremiah Grimwood*, and "*Elizabeth Grimwood* were *laſt legally ſettled in Eaſt Donyland*;" confirm the original Order; "ſubject nevertheleſs to the Determi- "nation of his Majeſty's Court of *King's Bench* upon a ſpecial Caſe "*to be* ſtated by Counſel on both Sides under the Direction of this "Court" [the Seſſions.] And they order the Churchwardens and Overſeers of *Eaſt Donyland* to pay to the Churchwardens and Overſeers of *St. Giles's* 1*l.* 14*s.* in caſe the Order ſhall be confirmed by the Court of *King's Bench:* But if it ſhall be ſet aſide, then the Churchwardens and Overſeers of *St. Giles's* to pay to thoſe of *Eaſt Donyland* a *reaſonable* Sum for the Maintenance of the ſaid *John*, *Jeremiah* and *Elizabeth Grimwood*, *to be ſettled* by any one of his Majeſty's Juſtices of the Peace for the ſaid Burrough.

The ſpecial CASE was as follows——*Jeremiah Grimwood*, the Father, came with his Wife and the ſaid Paupers his Family, with a *Certificate*, dated 30th *June* 1764, from the Pariſh of *Eaſt Donyland* to the Pariſh of *St. Giles*. The Paupers, the Children, being actually chargeable were removed from *St. Giles's* to *Donyland*, by the abovementioned Order, dated 16th *Nov.* 1767. In *May* 1765,

1765, *Grimwood* the Father *hired a Dwelling-house* with the Appurtenances, and ſix Acres of Land, in the ſaid Pariſh of *St. Giles*, from *Michaelmas* 1765, at the YEARLY RENT *of* 12 *l.* *Grimwood* held the ſame for two Years, to wit, to *Michaelmas* 1767; and paid two Years Rent. But it appearing to the Court, that the *Leſſor* of the Premiſſes had agreed to pay *Tythes*, *Poor-Rates*, *Window-Tax*, and *all other Taxes and Aſſeſſments whatſoever* (excepting the Rates to the *Highways*;) all which Taxes ſo agreed to be paid by the Landlord amounted annually, *in the whole*, to the Sum of 2 *l.* 11 *s.* The Court of Quarter-Seſſions were of Opinion "That the *Amount* of "the ſeveral Taxes *agreed to be paid as aforeſaid* ought to be con-"ſidered as an ABATEMENT *of the Rent*; and REDUCED the Pre-"miſſes UNDER *the yearly Value of* TEN *Pounds*; ſo that No Set-"tlement was gained in the Pariſh of *St. Giles*, by SUCH Renting "of the ſaid Premiſſes;" and confirmed the Order of the two Juſtices. EAST DONYLAND *and* ST. GILES'S.

Sir *Fletcher Norton* moved, on the laſt Day of laſt Term, to quaſh this Order of Seſſions: For that *Jeremiah Grimwood* the Father *did* (contrary to the Opinion declared by the Seſſions) *gain* a Settlement in *St. Giles's* BY *renting this Tenement* of 12 *l. per Annum*.

RULE *to ſhew Cauſe why both theſe Orders ſhould not be quaſhed.*

Mr. *Dunning* Solicitor General and Mr. *Birch* now ſhewed Cauſe why theſe Orders ſhould not be quaſhed.

They ſaid they hoped to be able to maintain that this Tenement was UNDER *the* *VALUE of Ten Pounds *per Annum*. The Tenant does *not* pay 12 *l.* a Year: He *only* pays *nine Guineas* a Year. But they ſaid, it was not neceſſary to debate *that* Point, as there was a fatal Objection to the *Juriſdiction* of the Seſſions; namely, that the *Appeal* ought to have been to the Quarter-Seſſions of the COUNTY, *not* to the Quarter-Seſſions of the BURROUGH.

The Act of Parliament of 8 & 9 *W.* 3. *c.* 30. *ſect.* 6, directs, "that the Appeal againſt any Order for the Removal of any poor "Perſon from out of any Pariſh Townſhip or Place, ſhall be had "proſecuted and determined at the General or Quarter-Seſſions of "the Peace for the COUNTY, DIVISION, or RIDING wherein the "Pariſh, Townſhip, or Place *from whence* ſuch poor Perſon ſhall "be removed, doth lie; and NOT ELSEWHERE."

* *V. ante*, No. 59, pa. 167. No. 111, pa. 311, 312, 313. And No. 128, pa. 400, 401.

This

EAST DONTLAND and ST. GILES's.

This Appeal is from an Order of the *Burrough*-Juſtices made for a Removal from a Pariſh in the Burrough, to the Quarter-Seſſions of the ſame BURROUGH. It ought to have been to the Quarter-Seſſions of the COUNTY. To prove this, they cited a Caſe in Point; which is reported in *Caſes of Settlement*, *Pa.* 6, No. 10. It was *Michaelmas* 11 *Ann.* the Caſe of the Pariſh of *Malden* in *Eſſex*—Lord *Parker* ſaid "That if two Juſtices of a Town Corporate that "has Seſſions of their own, make an Order there, the Appeal "muſt be to the *County*-Seſſions, and *not* to their *own* Seſſions: For "then there would be an Appeal *ab eodem ad eundem*; there being, "may be, the *ſame* Juſtices ſitting who made the Order." Therefore the *Original Order*, they ſaid, will *ſtand* in Force, as an Order UNappealed *from*.

Mr. *Morton* and Sir *Fletcher Norton*,—*contra*—ſaid that it ſhould have been *ſtated* "That *Colcheſter is* one of thoſe confined limited "Juriſdictions that have a Quarter-Seſſions of their own, though "it is not a County." But at preſent, it is *imperfectly ſtated*; and therefore it ſhould go down again, to be *more completely ſtated*.

But they urged, that the Pariſh of *St. Giles* are *concluded* from making this Objection, by their having *at this Burrough-Quarter-Seſſions*, and *upon this Appeal*, entered into the Queſtion *upon the Merits*, and actually *ſettled a Caſe there*, for the Opinion of this Court.

The original Order therefore is NOT *concluſive* as an Order UNappealed *from*: For the Parties have, all along, been going upon *another Ground*, and have *agreed to a Caſe to be ſtated*; out of which Caſe the Court *can not* go.

Beſides, the Appeal is given to the Quarter-Seſſions of *Counties*, *Ridings and* DIVISIONS. Now this *may* be a DIVISION. There *are* DIVISIONS which are *neither Counties nor Ridings*: And the Court can *not intend* "that this Corporation of *Colcheſter* is *not* "a Diviſion," when it does not appear upon the *Face* of the Order "that it is *not* ſo."

Therefore they inſiſted that the Order of Confirmation is made *by a* PROPER *Juriſdiction*. At leaſt, the Objection ought to have been made *below*; and *then* there would have been *Time* to appeal to the Quarter-Seſſions of the County: But that Time is *now elapſed*; and therefore the Objection comes too late, even if it has any Weight in it.

If they have been *uſed* to hear theſe Appeals, it is an Argument of their having *Juriſdiction to do ſo*.

THE COURT did not give any *ſolemn* Opinion on the *Merits:* Nor had they heard what *might* have been urged, with Regard to them *.

But upon the Objection to *this Appeal* to the *Burrough*-Seſſions —They agreed that the BURROUGH-*Seſſions* had *no Juriſdiction* to *make* this Order of Confirmation; and therefore *their Opinion* and *their Order* are Both NUGATORY: The Appeal ought to have been to the Quarter-Seſſions of the COUNTY. As *no* ſuch Appeal has ever been *made*, the *original Order ſtands.*

The Rule to ſhew Cauſe, why it ſhould not be quaſhed, muſt therefore be diſcharged.

And accordingly,

THE RULE *entered in the* Rule-Book *is*——
" *That the* Original Order *made for the*
" *Removal of* John Grimwood, Jeremiah
" Grimwood, *and* Elizabeth Grimwood
" *from* St. Giles's *in the Borough of* Col-
" cheſter *to* Eaſt Donyland, *be* AF-
" FIRMED."

* *Vide ante*, pa. 166, 167, No. 59. S. P. And pa. 311, 312, 313, No. 111. And pa. 400, 401, No. 128. See alſo 2 *Salk.* 490. S. P.

CONTINU-

CONTINUATION of the DECISIONS
OF THE
COURT of KING's BENCH
UPON
SETTLEMENT-CASES;
Containing four additional Years, ending with *Trinity* Term 1772, 12 *G.* 3.

Michaelmas Term
9 Geo. 3. 1768.

Rex *v.* Inhabitants of Stanlake. No. 192.

Monday 28th *Novem.* 1768.

A Tenant must be *rated*, as well as *pay*, in order to gain a Settlement.

TWO Juſtices removed *Elizabeth Moore*, Wife of *Daniel Moore* deceaſed, her four Children by Him, and two of his Children by a former Wife, from *Stanlake* to *Abingdon*. On Appeal, The Seſſions diſcharged their Order; ſtating the following Caſe—

Daniel Moore, Huſband of the Pauper *Elizabeth Moore*, and Father of the ſaid ſix Children, was originally ſettled in the Pariſh of St. *Helen's* in *Abingdon*. From thence he removed, and went to the

STANLAKE and ABINGDON.

Parish of *Stanlake* in the County of *Oxford*. He resided there ten or eleven Years, in a Tenement which he rented at 3*l.* 5*s.* a Year. During the Time of his said Residence, the said *Daniel Moore paid* the Poor's and Constable's Taxes *in his* own *Right*, for the said Tenement. In the Years 1753, 1761, & 1762, (Part of the said Time, for which the said Taxes were paid,) *Receipts* were given for the same, *to Him*, by the Overseers of the Poor of the said Parish of *Stanlake*: And the Receipts were *kept by the said Daniel Moore*, on his File of Receipts. The Parish-Rates of the Parish of *Stanlake*, for the 3 Years in which the said Receipts were given, were produced: When it appeared, "that the LANDLORD of the "said Tenement was *rated* for the said Tenement; and that *Da*"*niel Moore*, the Husband and Father of the Paupers, was NOT "rated." It is therefore Ordered by the Court [of Sessions] that the said Order made by the said two Justices of Peace be, and it is hereby discharged.

On *Wednesday* 27th *January* 1768, Mr. Serj. *Nares* moved, on behalf of the Parish of *Stanlake*, to quash this Order of Sessions, and to affirm the original Order; insisting that *Daniel Moore* did *not* acquire a Settlement in *Stanlake* by the mere *Payment* of these Taxes, without having been ever rated to them.

[*V. ante*, p. 73. No. 21. *Rex* v. Inhabitants of *Sarratt*, accord. Also pa. 98. No. 29. *Rex* v. Inhabitants of *Bramshaw*; and pa. 101. No. 30. *Rex* v. Inhabitants of *Lower Walton*; and pa. 465. No. 148. *Rex*. v. Inhabitants of *Painswick*.]

On *Saturday* 23d *April* 1768, Sir *Fletcher Norton* and Mr. *Wallace* shewed Cause, on behalf of the Parish of St. *Helen's* in *Abingdon*.

They agreed, "that he must be *virtually* rated:" But it was not necessary to rate Him by Name. And as this Man is stated "to have paid these Taxes in his *own* Right," He must consequently have been rated to them. If he was rated any One Year, it is sufficient. Now it only appears, that as to the three particular Years for which the Receipts were produced, he was not rated in *them*: But it does not follow, "that he was not rated in those "*other* Years for which he paid the Taxes in his *own* Right"; nor is it stated, that he was not rated in those *other* Years.

THE COURT sent it back, to be more fully and clearly stated; It not being at present stated, whether he was or was not rated in and for the *other* seven or eight Years.

On

On *Monday* 21ſt *November* 1768,

STANLAKE and ABINGDON.

" The Caſe having been re-ſtated, " That he *never was rated*, nor " ever paid theſe Taxes in his *own* Right; but that his *Landlord* " was rated; and though *Moore* paid One Year, he was repaid by " his Landlord;"

Serjt. *Nares* renewed his former Motion; and obtained a

RULE *to ſhew Cauſe.*

And now, on the 28th,

Sir *Fletcher Norton* gave up his Order, as at preſent ſtated.

Whereupon, the Serjeant's Rule was made abſolute, to Quaſh the Order of Seſſions, and affirm the Original Order. *

* *V. poſt.* No. 245. 252. *Douglas*, 214. S. P.

Rex *v.* Inhabitants of Notton. No. 193.

Monday 28th *Novem.* 1768.

Apprenticeſhip diſſolved, by the Maſter's telling his Apprentice " HE MIGHT " GO WHERE " HE PLEASED," and giving up his Indentures.

TWO Juſtices removed *Benjamin Watſon* and *Ann* his Wife from *Royſtone* in the *Weſt Riding* of *Yorkſhire*, to *Notton* in the ſaid *Riding*. *Notton* appealed to the Seſſions; who confirmed the ſaid Order; ſtating the following ſpecial Caſe, *viz.* That *Benjamin Watſon* the Pauper, when an Infant, was bound out a *Pariſh-Apprentice* by the Churchwardens and Overſeers of *South Heendley* in this *Riding*, to *Hannah Cuttle* of the *ſame Place* Widow, Occupier of a Farm within the ſaid Townſhip, until he ſhould attain the Age of 24 Years: Which Indenture was ſigned by and had the Allowance of two Juſtices of the Peace for the ſaid *Riding*.

That after he had ſerved about *ſix Years*, ſhe *quitted the ſaid Farm* to her Son *Stephen Cuttle*, and *left the ſaid Apprentice there*, with her Son *Stephen Cuttle*.

That the ſaid Pauper *lived with the ſaid Stephen Cuttle ſeveral Years*.

That then, being *deſirous to leave the ſaid Service*, He applied to his Maſter: Who told him " HE MIGHT GO WHERE HE PLEASED."

That *thereupon he left his ſaid Maſter*; and went to the publick Statutes at *Wakefield* in this *Riding*, and *hired* himſelf to one *John Walker* of *Ardſley for a Year*: And that afterwards he *hired* Himſelf to *ſeveral* different Places; but *did not continue* in *any* of them for 12 *Months*.

NOTTON and ROYSTONE.

That he *received the Wages* at every of these Places, for his *own* Use; and *never accounted* either with the said *Stephen Cuttle*, or the said *Hannah*.

That in or about the Month of *May* or *June* 1766, the said *Stephen Cuttle gave up his Indentures* to him.

That in *February* 1767, *John Baildon* of *Notton* wanting a Servant, one *Richard Dewhurst* of *South Heendley* informed Him "that "the Pauper was in their Town, and out of Place". That thereupon, the Pauper *hired himself* to the said *John Baildon*, and served the said *Baildon at Notton* aforesaid until some Time in *August* following; when he left his Service; and has done no Act since, whereby to gain a Settlement.

That the said *Dewhurst*, soon after his Conversation with *Baildon*, acquainted the said *Stephen Cuttle* "that he had recommend-"ed the Pauper to *Baildon's* Place": And that the said *Stephen Cuttle* thereupon said, "He thought it a good Place for him."

That the said Pauper, in the Month of *May* 1767, *attained his Age of* 24 *Years*.

And this Court [the Sessions] being of Opinion "that the *Ser-*"*vice* of the said Pauper with the said *John Baildon* as aforesaid, "*was a Service* UNDER *the Indenture*, until he attained his Age of "24 Years; and that such his Service, being above 40 Days, was "*sufficient* to gain him a Settlement;" do adjudge the last legal Settlement of the said *Benjamin Watson* and *Ann* his Wife to be in *Notton* aforesaid; and the said Order of Removal to be confirmed.

Vide ante, No. 174. pa. 543. 544. *Rex* v. Inhabitants of *St. Luke's* in *Middlesex*, in Point "that the Settlement is in *South* "*Heendley*." *v.* also, No. 91, No. 95, and No. 186.

Mr. *Fearnley*, supported by Sir *Fletcher Norton*, had moved, on *Wednesday* the 9th Instant, to quash both these Orders: And Mr. Solicitor General *(Dunning)* and Mr. *Leigh* now shewed Cause why they should not be quashed.

The two former argued, that the Pauper *Benjamin Watson* did *not* gain a Settlement in *Notton*: For there was no Service in *Notton*, *under* the Indenture of Apprenticeship. The Indentures were actually *given up*, before the Pauper hired Himself to *Baildon*: He hired Himself, as being *sui juris*. Besides, The Master did not consent to the Pauper's serving any * *particular Person*. He was not even consulted, either by the Pauper or by *Baildon*, about his hiring Himself to *Baildon*. *Dewhurst* did not acquaint Him of it till afterwards; And it was not at the Request of either *Baildon*

* *Vide ante*, No. 174. pag. 544.

or

er *Watſon*, that he told Him of it at all: And when he did acquaint Him of it, *Cuttle's* Anſwer does not imply that he conſented to it. *Cuttle* had only given his Apprentice a *general* Leave "to "go where he pleaſed." No Settlement could be gained under ſuch a general Diſcharge, by ſerving upwards of forty Days. NORTON and ROYSTONE.

The two latter Gentlemen argued, that the Pauper gained a Settlement at *Notton*, by having lived there above 40 Days in the Character of *Apprentice to Cuttle*. *Hannah Cuttle* had not given up the Indentures: Her Son alone could not do it. If the Maſter was privy to this Service of *Baildon*, and * conſented to it, or approved of it, it was then a Service of the original Maſter, though actually done to *Baildon*. But

* *V. ante*, No. 91. and No. 95.

The Court were clearly of Opinion, that the Service with *Baildon* in *Notton* was *not* a Service UNDER *the Indentures of Apprenticeſhip:* Conſequently, his Reſidence in that Pariſh upwards of forty Days was *not* ſufficient to gain the Apprentice a Settlement there. And accordingly,

BOTH ORDERS were QUASHED *.

* *Vide ante*, No. 142, 164, 180. *Poſt* No. 239. *accord.*

Rex *v.* Inhabitants of Bitton. No. 194.

Monday 28th *Novem.* 1768.

TWO Juſtices removed *George Battman*, Coal-miner, and *Mary* his Wife, from the Pariſh *St. Philip* and *Jacob* in the County of *Glouceſter* to the Hamlet of *Bitton* in the ſaid County: And, on an Appeal, their Order was confirmed. The Seſſions ſtated the following Caſe—

Adverſe Poſſeſſion of a Cottage, for more than 20 Years, will gain a Settlement.

George Battman, the Pauper, being legally ſettled in the Hamlet of *Bitton*, *built a Cottage*, at his own Expence, on the *Waſte* in the Hamlet of *Oldland*, the ſaid Waſte being within a Manor belonging to Mrs. *Archer*. The ſaid *George Battman* lived in the ſaid Cottage for *nineteen Years and an half* without Interruption; but *never paid* any *Taxes*, or was *rated* for the ſaid Cottage; or took any Leaſe of the Ground on which the ſaid Cottage was built, from the Lady of the Manor; or had any Leave or Licence to erect the ſaid Cottage. About *twenty* Years ago, the ſaid *George Battman* was turned out of the Poſſeſſion of the ſaid Cottage, by an Ejectment brought by a Perſon claiming the ſame under a Mortgage

BITTON and ST. PHILIP & JACOB.

Mortgage thereof made by the ſaid *Battman* for the Sum of fifteen Pounds: And ſome Time after that, (which was more than twenty Years ago,) the ſaid *Battman* and the Mortgagee *ſold* the ſaid Cottage to One *Williams*, for twenty-eight Pounds; and the ſaid *Battman* had five Pounds, Part of the Purchaſe-Money.

Mr. *Bearcroft* moved to quaſh theſe Orders: For that the Pauper had reſided forty Days upon his own, and was become irremovable from it, and conſequently gained a Settlement in the Place where it lay.

RULE *to ſhew Cauſe why both Orders ſhould not be quaſhed.*

Mr. Solicitor General (*Dunning*) and Mr. *Selwyn* now ſhewed Cauſe againſt quaſhing them. They urged, that the Pauper had *no Right* to this Cottage, either legal or equitable. He had no Leave from the Owner of the Soil, to erect it: He never was rated or paid any Taxes for it. The *Value* of this Cottage is not ſtated. If he had *purchaſed* it, for a Conſideration under thirty Pounds, it would not have given Him a Settlement after he ceaſed to * inhabit it. But here he has only *ſtolen* it: And ſurely He ought not to be in a better Condition as a Thief, than he would have been as a Purchaſer. If it were admitted, "that twenty Years Poſſeſſion would "* make a Title," yet no ſuch Poſſeſſion is here ſtated: And the Court cannot preſume it. The Poſſeſſion expreſsly here ſtated falls *ſhort* of twenty Years: It is only nineteen and an half. But

THE COURT were ALL of Opinion "that it appeared "to be a Poſſeſſion of *more than twenty* Years." He was Himſelf in Poſſeſſion nineteen Years and an half: And the Mortgagee's Poſſeſſion muſt be alſo conſidered as *his* Poſſeſſion. Upon the whole, his Poſſeſſion was upwards of 20 Years.

BOTH ORDERS QUASHED.

* *V.* 9 Geo. 1. c. 7. § 5.

* *V.* 1 *Strange* 608, 609. between the Pariſhes of *Aſhbrittle* and *Wyley*. *Ante*, No. 34. *pa.* 110. S. C. cited.

No. 195.

Rex *v.* Inhabitants of Garway.

Monday 28th *Novem.* 1768.

Poſſeſſion of a Cottage for more than 20 Years, though not altogether *adverſe*, will gain a Settlement.

TWO Juſtices removed *John Pritchard*, Shoemaker, and *Joan* his Wife, from the Pariſh of *Arcop* in the County of *Hereford* to the Pariſh of *Garway* in the ſame County: And their

Order

Order was confirmed by the Seſſions; who ſtated the following Caſe—

The Pauper *John Pritchard* was born in the Pariſh of *Kilpock*, in the ſaid County. He afterwards lived in the ſaid Pariſh of *Garway*, about four Years; and rented a Tenement of eight Pounds a Year; and was *rated and paid* to the *Pariſh Taxes in* the ſaid Pariſh of *Garway*, during the Time he lived there. About 35 or 36 Years ago, He went and lived with his Father in a *Cottage built upon the Waſte* in the ſaid Pariſh of *Arcop* where his Father had then lived about thirty Years. That as long as the Pauper remembers, (which is about *ſeventy* Years) a *Houſe ſtood upon the ſame Spot*; and the Land belonging to it, incloſed. That ſoon after the Pauper went to live with his Father, his *Father died*; and the *Pauper continued in Poſſeſſion* of the Premiſſes (being his Father's Eldeſt Son) *till the Time of his ſaid Removal* to the ſaid Pariſh of *Garway*; the *Pauper having paid an Acknowledgment* of two Shillings and Six-pence to the Lord of the Manor, for the laſt thirty Years: But, to his Knowledge, his *Father never paid any Acknowledgment*. The Premiſſes were of the yearly Value of *fifty Shillings*, or thereabouts.

The Seſſions therefore doth confirm the ſaid Order: And they order the Churchwardens and Overſeers of the Poor of *Garway*, ſome or one of them, on ſight, to pay to the Churchwardens and Overſeers of the Poor of *Arcop*, or ſome or one of them, the Sum of ten Shillings, the Coſts of the ſaid Appeal.

Mr. *Poole* had moved, on *Saturday* the 19th Inſtant, to quaſh theſe Orders; and had a Rule to ſhew Cauſe.

And, this Day, Mr. *Poole* moved to make his Rule abſolute; upon an Affidavit of Service.

Both Orders were quashed, without Defence.

See the laſt preceding Caſe, No. 194.

Hilary Term

9 Geo. 3. 1769.

No. 196. **Rex *v.* Inhabitants of Allcannings.**

Friday 27th *Jan.* 1769.

Executing the Office of *Tything-man*, as DEPUTY, will not gain a Settlement.

TWO Juſtices removed *Thomas Palmer*, *Sarah* his Wife, and their ſeven Children, from *Patney* in *Wilts*, to *Allcannings*: And upon an Appeal, the Seſſions confirmed their Order; ſtating the following Caſe——

Thomas Palmer, the Father, was ſettled in the Pariſh of *Allcannings* aforeſaid, until *Michaelmas*, 1756; when he went to reſide in the Pariſh of *Patney* aforeſaid. In 1762, whilſt he lived in the Pariſh of *Patney* aforeſaid, He was, at a Court-Leet held in and for the Manor and Pariſh of *Patney* aforeſaid, SWORN *Tythingman* for the ſaid Manor and Pariſh of *Patney*, in the Manner following, to wit, "The Jurors preſent to the Office of Tythingman for the *Year* "*enſuing*, Mr. *John Amor*; who, by *Leave* of the Court, PUTS IN "HIS PLACE *Thomas Palmer*: And *He is* SWORN." Accordingly, He the ſaid *Thomas Palmer*, the Father, lived in the Pariſh of *Patney* aforeſaid, and SERVED the ſaid Office of *Tythingman* there, for the Year then enſuing. It further appeared to the Seſſions, from the Evidence of the ſaid *Thomas Palmer* the Father, That the Houſe which Mr. *John Amor* occupied was then *in Turn* to furniſh a Tythingman for the ſaid Pariſh of *Patney*; and that the ſaid *John Amor* ſaid to the ſaid *Thomas Palmer* the Father, "Go "up to Court, and be ſworn *in my Place*;" and that the ſaid *Thomas Palmer*, the Father, was *ſworn* Tythingman of the Pariſh of *Patney accordingly*; And that He SERVED the ſaid Office for the Year then next enſuing: But that the ſaid *John Amor* PAID the Pauper *all his Expences* attending the Execution thereof; and at the Time of entering upon his ſaid Office, he was a *Common Labourer*, and an Houſekeeper living in the ſaid Pariſh of *Patney*. The Seſſions therefore confirm the ſaid Order.

ALLCANNINGS and PATNEY.

On *Saturday* 19th *November* 1768, Mr. Serjeant *Burland*, on behalf of the Pariſh of *Allcannings*, moved to quaſh both theſe Orders, inſiſting that the Juſtices were miſtaken in determining "that the Pauper was not ſettled at *Patney*, where he had execut-"ed this Annual Office for a Year." For it is enacted by 3. 4 *W.* & *M. c.* 11. § 6. "that if any Perſon who ſhall come to inhabit in "any Town or Pariſh, ſhall *for himſelf* and on his *own Account* "execute any public Annual Office or Charge in the ſaid Town or "Pariſh during one whole Year, he ſhall be deemed to have a le-"gal Settlement in the ſame, though no ſuch Notice in Writing "be delivered and publiſhed, as was therein before required." Now this Man did *execute* ſuch an Office *for Himſelf* and *on his own Account*; and though he was *ſworn in* at the Requeſt of another Perſon, yet his being ſo ſworn in was a ſufficient Act of *Notoriety*, to amount to Notice under this Act of Parliament: And the Pauper was the Perſon *reſponſible*. Therefore he prayed and obtained a

RULE *to ſhew Cauſe why the Orders ſhould not be quaſhed.*

Mr. *Dunning*, Solicitor General, now ſhewed Cauſe. He denied, that the Pauper executed the Office *for Himſelf* and on his *own* Account: on the contrary, He was the mere *Deputy* and *Subſtitute* of Mr. *Amor*; and was paid by Mr. *Amor* all his Expences attending the Execution of it. He cited the Caſe of the King againſt the Inhabitants of *Winterburn*, *ante*, pa. 520. No. 167. which was circumſtanced very like the preſent Caſe: and it was there determined "that the Subſtitute gained no Settlement," though he was ſworn in to the Office *.

* See alſo *Vin. Abr.* v. 19. p. 379. S. P.

Serjeant *Burland* anſwered, that there was a material Difference between the Caſe cited by Mr. Solicitor General, and the preſent Caſe. For, in the cited Caſe, *Merrick* was *never preſented* to the Office at any Court-Leet, as Conſtable in his own Right; which the Cuſtom required all Conſtables to ſerve for that Tithing to be: And conſequently he was never appointed at the Court-Leet, though he was ſworn in before a Juſtice of Peace. Whereas here it is ſtated "that *Palmer*, the Pauper, was ſworn in at the Court-"Leet, by Leave of that Court:" And, conſequently, he was appointed *by* the Court-Leet; and it was for Himſelf and on his *own* Account, that he executed the Office. This would be a good Title for him, upon an Information in nature of a *Quo Warranto* to ſhew by what Authority he took upon Him to execute the Office:

ALLCANNINGS and PATNEY.

Whereas *Merrick* was no more than Deputy or Subſtitute to Mr *Baily*. This Man's being appointed by and ſworn in at the Court-Leet was a Matter notorious to the Pariſh: And they might have removed him, if likely to become chargeable to them. It was Mr. *Amor's* Turn to furniſh a Tythingman. Now ſuppoſing Mr. *Amor* to have only *changed* Turns with the Perſon who ſtood next in Turn to him; and that ſuch Perſon had been appointed and ſworn in at and by Conſent of the Leet, for that Year, and *Amor* in like manner for the next Year; would not they *Both* have been Conſtables for themſelves, in their own Right, and on their own Account? In a Caſe between the Inhabitants of *Sheepshead* and *Melborne*, [v. *ante*, pa. 244. No. 83.] 2 Sir *J. S.* 1225. the officiating Schoolmaſter was conſidered as a Deputy; becauſe the Right was not in Him. But here the legal Right was in the Pauper; and He, not *Amor*, was reſponſible for his Conduct in the Office. The Serjeant added, that this Act of Parliament (of 3, 4 *W. & M.*) ought to be conſtrued liberally in favour of Settlements; becauſe it reſtores Peoples natural Rights: And he obſerved, that it only ſays "that if the Perſon ſhall *execute* the Office for himſelf and on his "own Account;" but that does not require that he ſhould be *choſen* in his own Right.

LORD MANSFIELD—My Brother *Burland* has argued this Point very ingeniouſly: But it ſeems to me to be a plain Caſe.

The Queſtion is, "Whether the Pauper ſerved this Office for "Himſelf and *on his own Account*; or not." The Queſtion is not, "how he was *preſented to it*;" but "how he *ſerved* it." Mr. *Amor* was the Perſon in Turn to furniſh a Tythingman: And He, by Leave of the Court, puts this Man, a Day-Labourer, in his Place, and pays Him all his Expences attending the Execution of the Office. And *Amor* received the Benefit of it, by being diſcharged of his Obligation to ſerve in this his Turn. Therefore he ſerved *for Amor*. It is true, that *Amor* was not liable for his Miſconduct; For, he was not Deputy to *Amor*: But yet it is clear, that he executed the Office *for Amor*, and *not for Himſelf* and on his *own* Account, according to the Intent and Meaning of this Act of Parliament.

Mr. JUSTICE YATES——In the Caſe of *Winterburn*, the Pauper was conſidered as a Subſtitute. Here indeed the Man was ſworn in at the Court-Leet; which the other was not, nor even preſented at it: But he appears clearly to have ſerved the Office *for* Mr. *Amor*; and not to have executed it for *Himſelf*, and on his *own* Account. This Act of Parliament meant and intended ſuch Perſons as

as were conſiderable enough in a Pariſh, to ſerve ſuch Offices for *Themſelves* and on their *own* Accounts: which this Man was not.

ALLCANNINGS *and* PATNEY.

Mr. JUSTICE ASTON was of the ſame Opinion, "that this "Man appeared clearly to have ſerved for *Amor*; and not to have "executed the Office *for Himſelf* and on his *own* Account." Though he was indeed ſo far the legal Officer, that he might have had a good Defence upon an Information in nature of a *Quo Warranto* brought againſt Him, for executing the Office; yet it don't follow, that he executed it *for Himſelf* and on his *own* Account, within the Intent and Meaning of this Act of Parliament.

Mr. JUSTICE WILLES concurred in Opinion, for the Reaſons above particularly ſpecified.

THE COURT were unanimous in diſcharging the Rule to ſhew Cauſe why the Orders ſhould not be quaſhed.

BOTH ORDERS were AFFIRMED.

Eaſter Term

9 Geo. 3. 1769.

No. 197.

Rex *v.* Inhabitants of Walpole St. Peter's.

Tueſday 2d. *May* 1769.

A *Son*, emancipated from his *Father's* Family, cannot gain a *new* DERIVATIVE Settlement.

1 *Blac. Rep.* 669. S. C. *N. B.* This is the laſt of the Settlement Caſes reported by Mr. *Juſt. Blackſtone.*

TWO Juſtices removed *Henry Skekell* from *Wiſbech St. Peter's* in the *Iſle* of *Ely* to *Walpole St. Peter's* in *Norfolk:* And their Order was confirmed upon an Appeal to the Seſſions; who ſtated the following Caſe—

Henry Skekell, the Pauper, was *born* at *Leverington* in the ſaid Iſle, about *Michaelmas* 1740, where his *Father* then occupied a Farm of about 50 *l.* a Year, which he occupied about four Years and a Half; and then he removed, with his Father and Family, to *Emneth* in the County of *Norfolk*, to a Farm which his ſaid Father rented and occupied *there*, of about 100 *l.* a Year; which Farm he occupied eight Years; during all which Time, he continued with his Father as *Part of his Family*. From thence he removed, with his Father, to *Leverington* aforeſaid, to an Eſtate which his ſaid *Father purchaſed* there, at the Price of 60 *l.* where he continued with his ſaid Father as *Part of his Family*, for one Year. From thence, he removed, with his ſaid Father, as Part of his Family, to OUTWELL in the ſaid Iſle, to a Farm which his ſaid Father rented and occupied *there*, of about 60 *l.* a Year; and continued there about a Year and a Half; and then he let Himſelf as a hired Servant, for a Year, to *Matthew Martin* of *Parſon Drove* in the ſaid Iſle Farmer; in which Service he continued about *ſix* Months, and then *went back* to his Father at OUTWELL aforeſaid; with whom he continued to live, *as Part of his Family*, for about three Years; when he *liſted* Himſelf for a SOLDIER, and continued in the Service four Years; when he received his Diſcharge at *Corke* in *Ireland*, in the Beginning

Beginning of the Year 1764, between *Candlemas* and *Lady-day*. About three Months after his Diſcharge, he came home to his Father, who *then* lived at WALPOLE aforeſaid, and rented and occupied *there* a Farm of about 50 *l.* a Year; and continued with his Father *there* about 12 or 14 Weeks; and afterwards worked at different Places as a Labourer; and about *Candlemas* 1767, he married; and then went, with his Wife, to his Father's at *Walpole* aforeſaid, maintaining Himſelf and his Wife, by his Labour, till the *Lady-day* following; and then went, with his Wife, to a Cottage at *Walpole* aforeſaid, which he rented and occupied at thirty Shillings a Year, but was never charged to nor paid any Pariſh-Rates there, and there continued till *Lady-day* 1768; and has ever ſince employed Himſelf as a Labourer, at different Places, till the Month of *December* laſt, when he was removed, by Order as aforeſaid, from *Wiſbech* to *Walpole*; and *never gained* a Settlement by any Act of his *own*. The Seſſions confirm the Original Order, upon the Merits.

WALPOLE St. PETER'S and WISBECH St. PETER'S.

Mr. *Blackſtone* moved, on *Monday* the 17th of *April* 1769, to quaſh both theſe Orders: For that the Pauper's legal Settlement was at *Outwell*; which was the Place of his Father's Settlement at the *Time* of the Pauper's leaving his Father's Family; and conſequently, the Pauper's own derivative Settlement. The Son, by liſting Himſelf for a Soldier, and continuing four Years in the Service, became *emancipated* from his Father's Family: and not having gained any ſubſequent Settlement for himſelf, muſt reſort to his old derivative Settlement at *Outwell*; and could not, after ſuch an Emancipation from his Father's Family, gain a Settlement at *Walpole St. Peter's*, where his Father had newly and ſubſequently gained a Settlement, but had none there when the Son left Him and ceaſed to be Part of his Family. If he had been examined concerning the Place of his legal Settlement, he muſt have declared it to be at *Outwell*: For he could not be ſuppoſed to know any thing of his Father's having gained any other Settlement ſubſequently to his quitting his Family. He cited two Caſes which prove "That if a grown up Son does not remove with his Father, "he can gain no Settlement in the Place to which his Father re-"moves, by virtue of his Father's gaining a Settlement there." One of them is in 1 Sir *J. Strange*, *pa.* 438. between the Pariſhes of *Eaſt Woodbey*, and *Weſt Woodbey*: The other, in his 2d *Vol.* 831. between the Pariſhes of St. *Michael Coſſany* in *Norwich*, and St. *Matthew's* in *Ipſwich*.* He obtained a

RULE to ſhew CAUSE.

Which

* See alſo *ante*, No. 93. *Poſt.* No. 251. S.P. *accord.*

WALPOLE St. PETER'S *and* WISBECH St. PETER'S.

Which Rule was, this Day, made abſolute, upon an Affidavit of Service, without any Defence.

BOTH ORDERS QUASHED.

No. 198. Rex *v.* Inhabitants of Romſey infra.

Thurſday 27th *April* 1769.

Apprentice can not gain a Settlement, by ſerving a *Certificate* Man, though with the Conſent of his *Maſter*.

TWO Juſtices removed *Saul Biſhop* and *Martha* his Wife, and *Saul* their Son (aged about two Years,) from St. *Michael's* in *Southampton* to *Romſey infra*, (both in the County of *Southampton:*) And upon an Appeal from their Order, the Seſſions confirm it; ſtating the following Caſe——

Saul Biſhop was, about nine Years ago, bound Apprentice by Indenture, for four Years, to *William Kearly* of the Pariſh of *All Saints* in the Town of *Southampton*; with whom he there ſerved and reſided for three Years; and then it was agreed between the ſaid *William Kearly*, *Saul Biſhop*, and one *Samuel Dagnell*, "that the ſaid *Saul* "ſhould *work with the ſaid Dagnell* the Remainder-part of the Ap"prenticeſhip: for which, *Kearly* was to receive two Shillings *per* "Week." He ſerved and reſided with Him accordingly, in the Pariſh of *Romſey infra*. The ſaid *Samuel Dagnell* during the whole Time reſided within the Pariſh of *Romſey infra*, under a Certificate from the Pariſh of St. *Giles's* in *Reading*. This Court [the Seſſions] is of Opinion, and doth adjudge, "that the ſaid recited Order ought "to be confirmed:" and the ſame is hereby confirmed accordingly.

On *Friday* 10th *February* 1769, Mr. *Impey* moved to quaſh theſe Orders; as no Settlement could be gained to this Apprentice by ſerving *Dagnell* in *Romſey*, becauſe he reſided there under a Certificate. It would be very hard upon Pariſhes, if irremoveable Certificate-men could charge them with their Apprentices: And therefore the 12 *An. c.* 18. § 2. was calculated to prevent this Inconvenience. And the preſent Caſe is within the Letter and Spirit of that Act. It recites how unreaſonable it is, that Certificate-perſons who can gain no Settlement for themſelves ſhould yet burthen Pariſhes with their Apprentices and Servants; and therefore enacts "that their Appren"tices or hired Servants ſhall *not* gain Settlements in virtue of their "Apprenticeſhip, or hiring and Service." And this Aſſignment of the

the Apprentice to a Certificate-man is exactly within the ſame Reaſon as if the original binding had been to the Certificate-man.

Romsey INFRA and St. Michael's.

Mr. *Dunning* (Solicitor General) and Mr. *Wallace* now ſhewed cauſe; and argued that this Apprentice gained a Settlement in *Romſey*, not as ſerving the Certificate-man, but as ſerving *Kearly* his original Maſter, in that Pariſh. An Apprentice to a Perſon *not* a Certificate-man, ſerving a Perſon who *is* a Certificate-man, by Leave, Approbation and Conſent of his original uncertificated Maſter, gains a Settlement in the Pariſh where he ſo ſerves: The Duty muſt be conſidered as performed *to the Original Maſter*; and it was, in the preſent Caſe, for his Benefit, as well as by his Order. The Act of 12 *An. c.* 18. does not extend to this Caſe. The Words of it are deciſive: They are confined to Apprentices bound by Indenture *to* certificated Maſters, and claiming Settlements by ſerving under ſuch Indentures of Apprenticeſhip to original Maſters who came into the Pariſh by Certificate. But this Apprentice was bound to a Maſter who was *not* a Certificate-man: He was in no Senſe Apprentice to the Certificate-man; but originally was, and continued to be the Apprentice of *Kearly*; and the laſt 40 Days of his Service by the Permiſſion and Approbation of his original Maſter gained Him a Settlement: To prove which, they cited the Caſe of the *King* againſt the Inhabitants of *Eaſt-Bridgeford*; which may be ſeen *ante*, pa. 133. No. 43.

Mr. *Morton* and Mr. *Impey* inſiſted, that the true Meaning and the ſound Conſtruction of this Act of Parliament is, that no Apprentice or hired Servant ſhall gain a Settlement in a Pariſh to which the Maſter came by Certificate, and in which the Maſter himſelf was thereby precluded from gaining one: They even carried it ſo far as to ſay, that the Letter of the Act would ſupport this Conſtruction of it.

Lord Mansfield—This Queſtion is plainer than any Argument can make it. The End and Intention of this Act of Parliament was to prevent Certificate-perſons from bringing a Charge upon the Pariſhes into which they came by Certificate. How can it be imagined, then, that *another Man's* Apprentice ſhould gain a Settlement by ſerving Him in that Pariſh, when his *own* Apprentice is made incapable of doing ſo?

Mr. Juſtice Yates—The Intention of this Act of Parliament is, that a Certificate-man ſhall not be the *Inſtrument* of the Apprentice's gaining a Settlement in the Pariſh *to which* he Himſelf came by Certificate; though he may indeed be an Inſtrument of his gaining

ROMSEY INFRA and ST. MICHAEL's.

gaining One in a *third* Pariſh. As in the Caſe of the *King* againſt the Inhabitants of *Petham*. [See this Caſe, *ante*, pa. 154. No. 54. and particularly, Pages 155, 156, and 157.] So, in the Caſe of the *King* againſt the Inhabitants of *Eaſt-Bridgeford*, *Eaſt-Bridgeford* was a *third* Pariſh, and not the Pariſh to which *Edward George*, the Aſſignor of the Apprentice to *Baggaley*, was certificated. There is nothing in that Caſe of *Eaſt-Bridgeford*, which contradicts the Poſition, "that no Certificate-man ſhall be the Inſtrument of an Ap-"prentice's gaining a Settlement in the *ſame* Pariſh into which He "Himſelf came under Certificate."

Mr. JUSTICE ASTON ſpoke to the ſame Effect. The Principle is, that the Certificate-man ſhall not be an Inſtrument of burthening the *ſame* Pariſh with the Apprentice: But there is no Eſtoppel or Concluſion between the Pariſh that gave the Certificate, and a *third* Pariſh.

Mr. JUSTICE WILLES concurred in the ſame Opinion.

THE COURT were therefore unanimous, that both Orders ought to be quaſhed: And accordingly,

BOTH ORDERS were QUASHED.

NOTE—There was a Caſe circumſtanced a good deal like the preſent, which came before this Court in *Eaſter* Term 15 *G.* 2. and again in *Mich.* 16 *G.* 2. and a third Time in *P.* 16 *G.* 2. but was never determined. The Pauper, *Nicholas Davis*, legally ſettled in *Deverell Longbridge*, was regularly bound by the Pariſh-officers to *Thomas Woodyear* of *Weſtbury* till 24; and ſerved him there, about two Years and an half: When *Woodyear*, by a verbal Contract between him and one *Joel Toop* of *Beckington*, who reſided there under a Certificate from the Pariſh of *Berkeley*, turned the Pauper over to the ſaid *Toop*, for the Reſidue of the Term; and he accordingly ſerved *Toop*, in *Beckington*, eight Years. Then *Toop* ſold Him to *Peter Pain* of *Deverell Longbridge*, for the Reſidue of the Term, for the Sum of 40*s.* and thereupon the Pauper ſerved *Pain* in *Deverell Longbridge* about half a Year; when, *Pain* and the Pauper diſagreeing, *Pain* agreed to diſcharge Him of the ſaid Term, for a Sum of Money; and thereupon, the Pauper procured the ſaid *Toop* to advance and pay ten Shillings to *Pain*, on that Account. And then the

the Pauper returned to, lived with, and ſerved the ſaid *Toop*, in *Beckington*, for about half a Year. The Seſſions were of Opinion " that the Pauper gained a Settlement in " *Deverell Longbridge*, by his Service to *Pain* there;" and confirmed the original Order removing Him thither. Mr. *Gould* moved to quaſh both thoſe Orders; and was afterwards ſupported by the late Earl of *Northington*, then Mr. *Henley*. They argued, 1ſt, That an *Aſſignment* to a Certificate-man is not within 12 *Ann. c.* 18. which extends, as they ſaid, only to an *Original Binding to* a Certificate-man. 2dly, That the ſecond Aſſignment (*viz.* from *Toop* to *Pain*) was bad, for want of the Privity and Conſent of *Woodyear*, the original Maſter. 3dly, That if the ſecond Aſſignment were good, the third muſt be equally ſo; and conſequently he remains ſettled at *Beckington:* For, it was not in *Pain's* Power to diſcharge this Apprentice, without the Interpoſition of the Quarter-Seſſions; and if *Pain* could not diſcharge Him, then his laſt Half-Year's Service at *Beckington*, was under the Original Binding; the Service to *Toop* there being in point of Law an actual Service of the firſt Maſter, and to be conſidered as ſerving *Woodyear* in *Beckington*. This Court took Time to adviſe: and on *Monday* 16th *May* 1743, upon Mr. *Henley's* moving for the Opinion of the Court, Lord Chief Juſtice *Lee* told him " there was ſome Difference " in Opinion; and the Court not being full (for Mr. Juſ- " tice *Chapple* was then ill at *Bath*,) it was proper to " ſtay till it ſhould be ſo." But it never came on again, I believe.

ROMSEY INFRA and ST. MICHAEL'S.

See alſo *ante*, No. 54. 56. 150. 170. *Accord.*

Trinity Term

9 Geo. 3. 1769.

No. 199. Rex *v.* Inhabitants of Friendſbury.

Monday 12th *June* 1769.

Contributing to the Support of the Poor, without being properly *rated*, will not gain a Settlement.

TWO Juſtices removed *Jonathan Bowler*, *Sarah* his Wife, and their four Children (ſpecifying their Names and Ages,) from *Sheerneſs* to *Friendſbury*, both in *Kent*:) and the Seſſions, upon Appeal, confirmed their Order; ſtating the following Caſe—

That *Jonathan Bowler*, when a Boy and unmarried and without Child or Children, hired himſelf, at 50 *s. per Annum*, for a Year certain, to One *Siborne*, who was Boatſwain of the *Chatham* Hulk; and that he continued in His ſaid Maſter's Service, under the ſame Contract and without any freſh hiring, for the Space of EIGHTEEN *Months*. That during all that Time, *Siborne*, the Maſter, kept Houſe and lived and reſided at *Queenſborough* in *Kent*, with his Family: But that the Pauper, during the *firſt twelve Months* of his Service, laid out and victualled ON BOARD *the* CHATHAM HULK, in the *River Medway*, which laid at her Moorings there; having the Pariſhes of *Chatham* and *Gillingham* on the Eaſt Side of the River, and the Pariſh of *Friendſbury* on the Weſt Side; But the ſaid Hulk laid *neareſt* to the Pariſh of CHATHAM. That about *Six Months before* the ſaid *Jonathan Bowler* left the Service of his ſaid Maſter *Siborne*, the *Chatham Hulk* went into *Chatham Dock*, to be repaired; and that the ſaid *Jonathan Bowler* was, *during that Time*, by the Order of his ſaid Maſter *Siborne*, removed and laid and was victualled ON BOARD *the* STERLING-CASTLE HULK; which likewiſe laid in the

River

River Medway, having the Pariſh of *Gillingham* on the One Side, and the Pariſh of *Friendsbury* on the other: But the ſaid Hulk laid *nearer*, by a third of a Cable's length, to *Upnor-Caſtle*, which is in the Pariſh of FRIENDSBURY in *Kent*, than it did to the Pariſh of *Gillingham*. That after the ſaid *Jonathan Bowler* had been on board the *Sterling-Caſtle* Hulk about *five Months*, the *Chatham* Hulk (of which, the ſaid *Siborne* his Maſter ſtill continued Boatſwain) came out of the Dock, and the ſaid Pauper returned on board of her; where he continued about *a Month*; at the Expiration of which Time, he *quitted* his ſaid Maſter's Service. FRIENDSBURY *and* SHEERNESS.

That theſe ſeveral HULKS are always *a-float*, and *ſwing-round* with the Change of the Tides: And that the Places where they laid, were the HOMES of each of the Veſſels, reſpectively.

That after the ſaid *Jonathan Bowler* quitted his ſaid Maſter's Service, He entered Himſelf as a Rigger, in his Majeſty's Service, at *Sheerneſs*; where he continued to live and reſide for about 24 Years, and till his Removal by the ſaid Order of two Juſtices.

That SHEERNESS is a *Ville*, and maintains its own Poor.

That the *Way of maintaining* them is, "that the groſs Sum of "*Sixpence* per *Quarter*, and no more, is ſtopt out of the Pay of "every Perſon ſerving in his Majeſty's *Dock Yard* under the Com-"miſſioners of the Admiralty there, for the Support of a CHEST "for the Maintenance of the Poor. That the Stoppage is made "on every Perſon ſerving his Majeſty as aforeſaid, indiſcriminately, "and without any Attention to his Ability to pay the ſame, or his "being likely to become chargeable to the ſaid Ville of *Sheerneſs*, "by the Pay-Clerks of the Dock-Yard at *Chatham*, (to which that "of *Sheerneſs* is an Appendage,) before the Commiſſioners of *Chat-*"*ham Dock-Yard*, at the Time of paying every Perſon's Wages; "and afterwards is paid over, by the Commiſſioner of *Chatham-*"*Dock-Yard*, to the Clerk of the Cheque of *Sheerneſs*; who there-"with relieves the *Caſual*, as well as *ſettled* Poor of the ſaid Ville "of *Sheerneſs*, without the interfering of the Overſeers of the Poor "of the ſaid Ville; who never received theſe Stoppages, but are "wholly employed in obtaining Orders of Removal: And then the "Pay-Books are returned up to the proper Officers in *London*."

That this *Jonathan Bowler*, during all the Time of his Reſidence at *Sheerneſs*, had the uſual Deduction of Sixpence *per* Quarter ſtopt out of his Wages, by the Pay-Clerks, in the *ſame Manner* as *every other* Perſon in his Majeſty's Service there, as aforeſaid.

That there is NO *legal Rate* made by the Overſeers of the Ville of

FRIENDSBURY and SHEERNESS.

Sheerneſs, and allowed by Juſtices of the Peace for *Kent*, for the Maintenance of the Poor there: Nor does any Perſon contribute for that Purpoſe in *any other* Manner than as aforeſaid; except that when the Money ſtopt out of the Pay of the Perſons in his Majeſty's Service as aforeſaid, is *not ſufficient* for the Maintenance of the Poor, then *voluntary* Contributions are collected for that Purpoſe, not only from the ſeveral Houſeholders and other Perſons who live there, but from thoſe of the Ordnance, Captains of Ships, and ſuch others who are willing to contribute thereto; and in which Caſe, every Contributor gives what He *thinks fit*, and *no more*. That theſe Stoppages are made in conſequence of an Application, ſome Years ago, from the Perſons in his Majeſty's Service, as aforeſaid, at *Sheerneſs*, to the Commiſſioners of the Admiralty for that Purpoſe, at the Time that the Ville of *Sheerneſs* firſt began to maintain its own Poor, in order to enable them thereto.

THE SESSIONS, after ſeveral Adjournments, CONFIRM the Order of two Juſtices, made for removing theſe Paupers from *Sheerneſs* to *Friendsbury*.

On *Friday* 2d *June* 1769,

Mr. *Robinſon* moved to quaſh both theſe Orders. He denied that *Bowler* the Pauper had gained any Settlement in *Friendsbury*. The floating Hulk, He ſaid, could give him none there. The *Chatham* Hulk, where he lay and was victualled for the firſt twelve Months of his Service, lay neareſt to *Chatham*: So that his firſt Year's Service was completed in *Chatham*; or at leaſt not in *Friendsbury*, which was not the Pariſh where it lay: And he was on board the *Sterling-Caſtle* Hulk only ſix Months. It is not ſtated, that he ſerved for a Year in *Friendsbury*; nor does it at all appear, that he did ſo. It does not even appear that he ſerved his Maſter on board the *Sterling-Caſtle* Hulk: He only went thither for Maintenance. His Maſter had nothing to do there: And therefore he could not be in his Maſter's Service there. Mr. *Robinſon* obſerved alſo, that though the Places where the Hulks lay were the reſpective Homes of the Veſſels, they were not ſtated to be the Home of the Maſter. He inſiſted that the Pauper's true legal Settlement was in *Sheerneſs*; and that he gained a Settlement there, by having contributed for 24 Years, to the Maintenance of the Poor of that Pariſh in the uſual Manner in which the Poor of it are ſupported.

Mr.

FRIENDSBURY and SHEERNESS.

Mr. *Dunning* (Solicitor General) now ſhewed Cauſe, on behalf of the Pariſh of *Sheerneſs*. He ſaid, that the preſent Caſe was underſtood by the Seſſions, to have fallen within the Reaſon of the *Dorſetſhire* Caſe of *Bridport* Harbour: [See this Caſe, at large, *ante*, pa. 521. No, 171.] But the Fact is not here ſufficiently ſtated; It being ſtated, "that the *Sterling-Caſtle* Hulk lay *nearer* to the Pariſh of "*Friendsbury*, than it did to the Pariſh of *Gillingham*:" Whereas the Fact was, "that the Hulk on board of which the Boy reſided, "lay *within* the Pariſh of *Friendsbury*." Therefore he propoſed that the Counſel on the other Side ſhould *admit* "that it lay *within* "the Pariſh of *Friendsbury*."

But Mr. Serjeant *Leigh*, who was Counſel for *Friendsbury*, was ſo far from admitting it, that he diſputed its being the *Truth* of the Fact: And he ſaid, there would be a further Doubt, "Whether the Boy "could gain a Settlement by only ſix Months Reſidence on board "the *Sterling-Caſtle*, when he had before gained a Settlement in "*Chatham*, by a complete Year's Service on board the *Chatham* "Hulk." However, he ſeemed chiefly to rely on the Objection of the Pauper's having gained a ſubſequent Settlement in *Sheerneſs*, by *contributing* to the Maintenance of their Poor for 24 Years. He cited *Viner's* Abridgment, Title "Settlements," Letter K. Caſe 9. The *Queen* againſt the Inhabitants of St. *Giles's Cripplegate* and St. *Mary Newington*; where a Scavenger's Rate, made by Conſtables and Inhabitants only, and allowed to be illegal and void, was yet holden to give a Settlement, as the Money collected under it was to be paid to the public Levies of the Pariſh: Therefore, though the Court held the Rate to be void, yet they held the Payment to be a *Contributing to the public Levies* of the Pariſh; it being a Pariſh-Charge, and the Pariſh having had as much Benefit from the Contribution, as if it had been a good Rate. So here, This Man had contributed 24 Years to the Support of the Poor of the Pariſh of *Sheerneſs*, in the *uſual* Manner, though not the legal One: And that Pariſh have had *equal Benefit* from his Contribution, as if it had been in the ſtrict legal Manner. It is only a new Mode of collecting the Money: And as the Pariſh of *Sheerneſs* have had the very ſame Benefit from it, they ought not now to take Advantage of their *own* Irregularity in the Mode of collecting.

Mr. *Dunning* denied that this Stoppage of Sixpence *per* Quarter for the Cheſt is *ſuch* a Contributing to the public Levies of the Pariſh of *Sheerneſs*, as is ſufficient to gain a Settlement there. As to the Caſe cited from *Viner*—He agreed, that it is not abſolutely neceſſary

FRIENDSBURY *and* SHEERNESS.

ceſſary that a Rate be ſtrictly and exactly legal; provided that it be acquieſced in: If it be acquieſced in by the Pariſh, it would be unreaſonable that the Pauper, who has paid it, ſhould loſe his Settlement. The Rate there mentioned was acquieſced in by the Pariſh: But the Pariſh of *Sheerneſs* could never mean, that their permitting their Poor to receive Relief from this Cheſt ſhould burthen them with all the Workmen of the Dock-Yard. This is no Rate, nor any authoritative Collection, or obligatory Contribution for the general Maintenance of the Poor of *Sheerneſs*. As to its not being ſtated "Whether the Boy ſerved his Maſter on board the *Sterling-Caſtle* Hulk, or not?"—He anſwered, that an Apprentice would gain a Settlement in the Place where he lodged the laſt forty Days; whether his Maſter had Employment for him in that Place or not. As to Mr. *Robinſon's* Obſervation, "that the Place where the "Hulks reſpectively lay was not ſtated to be the Home of the Boy's "Maſter"—He anſwered, that it was ſtated here, exactly as it was in the Caſe of *Burton-Bradſtock*, "that it was the Home of the "Ship:" Which is ſufficient. If the Ship lay in *Friendsbury* Pariſh, the Pauper was certainly ſettled there: (And, upon his appealing to Mr. *Robinſon* for the Truth of that Fact, Mr. *Robinſon* candidly acknowledged "that the Juſtices at Seſſions did think that "the Place where the *Sterling-Caſtle* Hulk lay, was within the Pa"riſh of *Friendsbury*.")

LORD MANSFIELD—It is impoſſible to make the Contribution here ſtated a ſufficient Foundation for gaining a Settlement, under the Statute of 3 & 4 *W. & M. c.* 11. § 6. which requires the being "*charged with* and paying his Share towards the public Taxes "or Levies of the Town or Pariſh."

But it ſeems a great Hardſhip upon theſe Men, that they ſhould pay all this Money, and yet have no Benefit from it. And he expreſſed his Diſapprobation of ſuch an improper Method of collecting the Poor-tax.

Mr. JUSTICE YATES—In order to gain a Settlement, the Perſon muſt be *rated*, as well as pay.

THE WHOLE COURT were clear, that the Pauper gained *no* Settlement in *Sheerneſs*, by contributing in this Manner, towards the Maintenance of their Poor. And as to his gaining a Settlement in *Friendsbury*, They ſent it back to the Seſſions to be reſtated, and to have the Fact aſcertained "Whether the Place where the *Sterling-Caſtle* Hulk lay, was *within* the Pariſh of *Friendsbury*, or not."

But it never came before the Court any more, I believe.

Michaelmas

Michaelmas Term

10 Geo. 3. 1769.

Rex *v.* Inhabitants of Stapleton.

No. 200.

Saturday 25th *Novem.* 1769.

A Son living with his Mother, as Part of her Family, may gain a Settlement by being rated to and paying the Poors Rate, &c. as Occupier of his Mother's Land.

TWO Juſtices removed *John Mortimer* and *Sarah* his Wife and *Elizabeth* their Daughter, from *Stoney Stanton*, in the County of *Leiceſter* to *Stapleton* in the ſame County: And the Seſſions, upon appeal, confirm their Order; ſtating the following Facts—

The ſaid *John Mortimer* had gained a Settlement in *Stapleton*. He afterwards went to *live with his Mother*, as *Part of her Family*, at *Stoney Stanton*; where She had a Houſe and a ſmall Parcel of Land, which *She occupied Herſelf*. Whilſt he lived with his Mother, he was in two Rates on Houſes and Lands only, in the ſaid Pariſh of *Stoney Stanton*, (and not upon perſonal Eſtate;) the One, a *Poors Rate* made the 10th Day of *October* 1765; the Other, a *Church Rate* made the 9th Day of April 1766; (and both which were for defraying the Expences of the Year 1765;) *charged as Occupier* of the Land belonging to his Mother; and PAID *ſuch Aſſeſſments*; although he *did not*, during any Part of that Year, *occupy* the Whole or any Part of that Land, or any Houſe or other Land in the ſaid Pariſh of *Stoney Stanton*. At *Lady Day* 1766, and not before, he entered upon his ſaid Mother's ſaid Land, at the yearly Rent of *L.* 5, 10*s.* and occupied the ſame till the *Chriſtmas* following, and no longer; but neither was charged with nor paid his Share towards any of the public Taxes or Levies of or for the ſaid Pariſh of *Stoney Stanton*, for the Time he occupied the ſaid Land; and there *not* being any *other* Pretence for the ſaid *John Mortimer* and *Sarah* his Wife and *Elizabeth* their Daughter or any of them having gained a Settle-

STAPLETON and STONEY STANTON.

ment *ſubſequent* to that gained by Him in the ſaid Pariſh of *Stapleton*, than his being *charged and paying to the ſaid two Rates.*

Mr. *Dunning* (Solicitor General) had moved, on *Tueſday* the 14th Inſtant, to quaſh this Original Order and alſo the Order of Seſſions which confirmed it. He ſaid, the Juſtices had quite miſtaken the Law: For that the Pauper had clearly gained a Settlement in *Stoney Stanton*, by having been *rated and paid* his Share towards the public Taxes or Levies of that Pariſh; which, by the 3 & 4 *W. & M. c.* 11. § 6. is made equivalent to Delivery and Publication of a Notice in Writing.

Mr. *Wallace* now ſhewed Cauſe againſt quaſhing theſe Orders. His Argument was, that the Equivalent to Notice, preſcribed by that Statute, is "being charged with and paying *his Share* towards "the public Taxes or Levies of the Pariſh:" So that the Charge muſt be in Proportion to what he *occupied*. But this Man occupied *Nothing*. It could not therefore be charged as *his* Share: It was his *Mother's* Share. Conſequently, He is not within the Terms of this Clauſe of the Statute: And his former Settlement in *Stapleton* remains; as he has no other Pretence but *this*, for having gained a *ſubſequent* One.

Mr. *Dunning* replied, that theſe Facts amount to a Public Recognition by the Pariſh, of the Man's Inhabitancy amongſt them: And the Words "*his Share*" mean no more than ſuch Part or Proportion of the whole Tax as was charged perſonally *upon Him.*

THE COURT were very clear, that He gained a Settlement in *Stoney Stanton*, by having been *thus charged*, and having *paid* what he was ſo charged with.

BOTH ORDERS QUASHED.

See the ſeveral Caſes referred to at the Bottom of *pa.* 6. 2 *Burr. Rep.* 1062. *Doug.* 545, 549, *accord.*

No. 201.

Rex *v.* Inhabitants of Ipſley.

Saturday 25th *Novem.* 1769.

A *Certificate*, acknowledging an *unmarried* Woman to be *pregnant*, and undertaking to provide for the *Child* or *Children* ſhe went with, will oblige the Pariſh granting it to provide for an *after-born* Baſtard.

TWO Juſtices removed *Mary Cauſier*, the Wife of *James Cauſier*, and her two Sons (ſpecifying their Names and Ages) from *Ipſley* in *Warwickſhire* to *Studley* in the ſame County. The Seſſions, upon an Appeal, quaſh their Order; ſtating the following Facts—

Ann Cauſier, the Mother of *James Cauſier* the Huſband of the Pauper, in the Month of *December* 1740, came into the Pariſh of *Ipſley*, to reſide there under and by virtue of a CERTIFICATE *from Studley* to *Ipſley*, in the Words and Figures following, that is to ſay, "*Warwickſhire*—To the Churchwardens and Overſeers "of the Poor of the Pariſh of *Ipſley* in the County of *Warwick*, or "to Any or Either of them, We *Richard Cooks* and *John Ware*, "Yeomen, Churchwardens of the Pariſh-Church of *Studley* in the "ſaid County of *Warwick*, and *Richard Reeve* and *Thomas Wilkes*, "Overſeers of the Poor of the ſaid Pariſh of *Studley*, Yeomen, do "hereby, for our Selves and Succeſſors, certify, own and acknow-"ledge that *Ann Cauſier*, *Spinſter*, *and the Child or Children that* "*She* NOW GOETH WITH, to be our Inhabitants *legally ſettled with* "*Us* in our ſaid Pariſh of *Studley* in the ſaid County of *Warwick*: "And if at any Time hereafter the ſaid *Ann Cauſier*, or her Child "or Children which She *now goeth with*, ſhall become chargeable "to and aſk Relief of Your ſaid Pariſh of *Ipſley*, We the ſaid "Churchwardens and Overſeers of the Poor of our ſaid Pariſh of "*Studley* do hereby promiſe for Our Selves and Succeſſors, that "We will, when requeſted by Any of You, receive them and re-"lieve them, and provide for them as our Inhabitants, according "as the Law in that Caſe requires. In Witneſs whereof, We the "ſaid Churchwardens and Overſeers of the Poor to this our Cer-"tificate have put our Hands and Seals this 18th Day of *December* "1740. Churchwardens, *Richard Cooks* X his Mark; *John Ward* "X: Overſeers, *Richard Reeves* X: *Thomas Wilkes* X. Atteſted by "Us—*John Mitchel*: The Mark of X *Richard Mitchel*. We whoſe "Names are hereunto ſubſcribed, two of his Majeſty's Juſtices of "the Peace for the County of *Warwick* aforeſaid, do allow of the "above Certificate: And we do alſo certify, that the Witneſſes "who atteſted the Execution of the ſaid Certificate have made "Oath before Us, that they did ſee the Churchwardens and Over-"ſeers whoſe Names and Seals are to the ſaid Certificate ſubſcrib-"ed and ſet, ſeverally ſign and ſeal the ſaid Certificate; and that "the Name of the ſaid *John Mitchel* and the Mark of *Richard* "*Mitchel*, whoſe Names are above-ſubſcribed as Witneſſes to the "Execution of the ſaid Certificate, are of their own proper Hand-"writing—Dated the 18th Day of *December* in the Year of our "Lord 1740. *W. Somervile*, *Edm. Chambers*." And it appearing to this Court [the Seſſions] that the ſaid *Ann Cauſier* was at the Time of her coming to *Ipſley* as aforeſaid, *unmarried* and *pregnant*

IPSLEY *and* STUDLEY.

Ipsley and Studley.

with the ſaid *James Cauſier*, who was *born* in the ſaid Pariſh of *Ipſley*, SOON AFTER THE CHRISTMAS FOLLOWING; that the ſaid *James* was born a BASTARD, and afterwards married the Pauper *Mary Cauſier*; and that the ſaid *Mary*, *at the Time of her Removal*, was actually chargeable to the ſaid Pariſh of *Ipſley*; The ſaid Court of Quarter-Seſſions being of Opinion "That the *Certificate could* "NOT *operate or extend to the* BASTARD-*Child* being then in *Ventre* "*ſa Mere*."

On *Thurſday* 9th *November* 1769, Mr. *Wheler* moved to quaſh this Order of Seſſions; inſiſting that the Pariſh of *Studley were* bound by their Certificate, to indemnify his Clients, the Pariſh of *Ipſley*, from this Child, of which the Mother was pregnant and almoſt ready to be delivered at the *Time* when they gave this ſpecial Certificate acknowledging Her to be *pregnant* though *unmarried*, and promiſing to provide for the Child or Children She *then went with*.

Mr. *Dewes*, ſupported by Mr. Solicitor General (*Dunning*,) now ſhewed Cauſe. They ſaid, this was a fair Tranſaction: There was no Fraud, either ſtated, or that could be preſumed. But it is only a *Contract*, upon which the Pariſh of *Ipſley* may take their legal Remedy: Perhaps it may, or perhaps it may not bind the Pariſh of *Studley as a Contract*. But it is *no* CERTIFICATE within the Act of 8 & 9 *W*. 3. *c*. 30.—The Undertaking relates to a Non-Entity, an Embrio. An unborn Child can't be perſonally certificated. It is no Part of the Parent's Family: And the Act only obliges the certifying Pariſh to provide for the Pauper mentioned in the Certificate, together with his or her Family. And this Child, when born, would be only a Baſtard: But a Baſtard is no Body's Child; and could not therefore be a Part of any Body's Family, in the Senſe of the Act of Parliament. The Makers of the Act had not the Caſe of a Baſtard in their Contemplation: Nor is an unborn Baſtard the Object of a Certificate. A *Baſtard* is ſettled where it is *born*; even though it be the Baſtard of a certificated Perſon *; and even although the Certificate expreſsly undertakes "to provide for the Wo- "man (who was pregnant at the Time) † *and her Child*." So that the Baſtard would undoubtedly be ſettled in the Pariſh where born, unleſs the Certificate particularly recognizes and expreſsly ſpecifies the ſpecial Circumſtances of the Parent's Caſe. The only Queſtion is, "Whether its being particularly ſpecified and recognized in the "Manner as it is in the preſent Certificate, makes any Difference." And they endeavoured to ſhew "that it did *not*." But,

* *V. ante*, No. 66. p. 190. *Rex v.* Inhabitants of *Helton*.

† *V. ante*, No. 90. p. 264, 265. *Rex v.* Inhabitants of *Wyke*.

THE COURT were ſo clearly of a contrary Opinion, that they ſtopt Mr. *Wheler* from replying: For, they unanimouſly held, that

that the Pariſh of *Studley* were bound by this Certificate, which takes Notice of the Woman's being then *unmarried* and *with Child*; and acknowledges the *Child She then went with* to be legally ſettled with them in their Pariſh. And,

Ipsley and Studley.

Lord Mansfield obſerved, that the Woman was very big with Child; and was underſtood by both Pariſhes to be ſo: And *Studley* expreſsly promiſed to provide for the Infant ſhe then went with. Therefore they ought to be bound by their Certificate. An Infant *en Ventre ſa Mere* may be, to a Variety of Purpoſes, conſidered as *born:* (of which, he ſpecified a great Number of Inſtances.)

Per Cur. unanimouſly,

Order of Seſſions quashed.
Original Order affirmed.

Rex *v.* Inhabitants of Dedham.

No. 202.

Tueſday 28th *Novem.* 1769.

A *ſpecial* Hiring, at ſo much *a Week, Summer and Winter*, will not gain a Settlement.

Two Juſtices removed *Samuel Bolton* and *Mary* his Wife from *Bedfield* in *Suffolk* to *Dedham* in *Eſſex:* And the Seſſions, upon an Appeal, confirmed their Order; ſtating the following Facts—

Samuel Bolton, the Pauper, was bred up to the Trade of a Plumber and Glazier. In the Month of *April* 1767, He *let Himſelf* to *John Maſon* of *Dedham* aforeſaid Plumber and Glazier, at the *Wages of ſix Shillings a-week, Board, Lodging*, and *Waſhing, Summer and Winter*. He ſerved *under* that *Agreement*, for the Space of *eleven* Months: When his Maſter, having taken an Apprentice, informed Him, "that he muſt lodge out of his Houſe." Upon which, the Pauper demanded Sixpence a-week more; alledging "that he "would *otherwiſe quit the Service*, on account of his Maſter's hav- "ing withdrawn from the original Agreement." He continued to receive the additional Sum of Sixpence a-week, till the *September* following: And during all the ſaid Service, his Maſter paid him his Wages, in different Proportions, as he wanted them. And that, by the aforeſaid Hiring, the *Pauper apprehended* He was bound *to ſtay with his Maſter* a Year. Whereupon, this Court [the Seſſions] is of Opinion "that the ſaid *Samuel Bolton gained* a Settlement "in the ſaid Pariſh of *Dedham*, by Reaſon of the Facts above ſta-

DEDHAM and BEDFIELD.

"ted;" and doth therefore *confirm* the ſaid Order of the ſaid two Juſtices, for Removal of the ſaid *Samuel Bolton* and *Mary* his Wife from the ſaid Pariſh of *Bedfield* to the ſaid Pariſh of *Dedham*; ſubject to the Opinion of the Court of King's Beneh.

Mr. *Thurlow* moved, on *Wedneſday* the 15th inſtant, to quaſh both theſe Orders. His Objection was, "that here is *no Hiring* "*for a Year.*" There is nothing here ſtated, that imports a Contract *for a Year:* And conſequently, the Pauper was *not bound to ſerve a Year*, whatever he Himſelf might apprehend about it.

Mr. *Dunning* and Mr. *Soame* now ſhewed Cauſe againſt quaſhing the Orders. They argued, that here was a Hiring for a Year, as well as a Service for a Year. A *general* Hiring is a Hiring *for a Year**. The Mention of "ſix Shillings *a-week*," is only to aſcertain the *Rate* of the Wages; but does not mean to conſider the Service as a *weekly* Service: And, as the Wages in this Trade are higher in Winter than in Summer, the Words "*Summer and Winter*" ſhew that this was intended to be a continued Contract for *both* thoſe Seaſons; and that by fixing the Wages to be the ſame in both, it was underſtood by both Parties to be a Contract for the *whole* Year. But it is, at leaſt, an *indefinite* Contract: And an indefinite Contract is a Contract for a Year.

* *Vide ante*, No. 107 and the Caſes there cited, p. 301.

Mr. *Thurlow* was going to reply. But,

LORD MANSFIELD ſtopt him; ſaying that the Caſe was too plain, to require any Thing more to be ſaid upon it, on Mr. *Thurlow's* Side.

All the Caſes require a Hiring for a Year. But there muſt be a *reciprocal Obligation* upon both the contracting Parties.

I ſee Nothing here, that can be laid hold on, to make it a Hiring for a Year. It was a Hiring at ſo much *a-week:* And when the Maſter could not lodge the Servant any longer, they came to a new Agreement for an additional Sixpence *a-week*. The Servant at that Time alledged, "that he would quit the Service, unleſs the "Maſter would comply with his Demand:" And to prevent his doing ſo, the Maſter complied, and agreed to pay Him Sixpence a-week more.

Mr. JUSTICE YATES—There muſt be a Hiring for a Year; either in *Law*, or in *expreſs Words*. Theſe *Words* do *not* expreſs it: And here is a Circumſtance ſtated, which deſtroys the Preſumption of its being a general Hiring for a Year; namely, "that the Ser-"vant demanded an additional Sixpence a-week, alledging that he "would otherwiſe quit the Service; and the Maſter complied:"

So

So that neither of them ſeems at that Time to have thought the Contract originally made between them was binding for a Year. DEDHAM and BEDFIELD.

Mr. JUSTICE ASTON—Though a general Hiring is a Hiring for a Year, yet there muſt be an Obligation upon the Servant "to ſerve for a Year," in order to his gaining a Settlement under ſuch a Hiring. But there is Nothing in the Contract here ſtated, that infers ſuch an Obligation upon this Servant. The ſix Shillings a-week Wages "*Summer and Winter*," only imports the Agreement to have been "that the Wages ſhould continue always the "ſame, and not be varied according to the Seaſons:". It does not import "that the Contract was to continue during the whole Year." And the Maſter's complying with the Servant's Demand of the additional Sixpence a-week, upon the Servant's declaring "that he would "otherwiſe quit the Service," ſhews how the Contract was then underſtood by Both of them. The Pauper's *Apprehenſion* ſtated in this Order of Seſſions is Nothing*: We can not regard it; eſpecially, as he is ſtated to have alledged "that he would *quit* the Service, "unleſs his Maſter would comply with his Demand."

* *V. ante*, No. 52, p. 152.

Mr. JUSTICE WILLES concurred in Opinion.

By the COURT unanimouſly,

BOTH ORDERS QUASHED.

V. poſt. No. 206. Rex v. Inhabitants of *Bradninch.*

Hilary

Hilary Term

10 Geo. 3. 1770.

No. 203. **Rex *v.* Inhabitants of All Saints in Hereford.**

Monday 29th *January* 1770.

A *Binding* by an *unſtampt Agreement*, without an *Indenture*, will not gain a Settlement by *Apprentice-ſhip*. And a *Binding*, as an *Apprentice*, cannot be converted into a *Hiring* as a *Servant*.

TWO Juſtices removed *Abraham Lewis*, *Ann* his Wife, and their ſeven Children, (naming them and ſpecifying their Ages,) from *Peterchurch* in the County of *Hereford* to *All Saints* in the City of *Hereford*. The Seſſions confirm their Order; ſtating the following Facts—

The ſaid *Abraham Lewis* was born in the Pariſh of the *Hay*, in the County of *Brecon*. Afterwards, the ſaid *Abraham Lewis* and his Father entered into an Agreement in Writing, dated 9th *June* 1740, *(not ſtampt,)* with *Mary Tringham*, in the following Words, *viz.* "Be it remembered, that it is agreed between Mrs. *Mary* "*Tringham*, *Cooper's* Widow, of the Pariſh of *All Saints* in the "City of *Hereford*, of the one Part; and *Abraham Lewis* the "elder and *Abraham Lewis* the younger, of the Pariſh of *Dorſtone* "in the County of *Hereford*, of the other Part; in manner as fol-"loweth:—Whereas the ſaid *Abraham Lewis* the younger, with "the Conſent of *Abraham Lewis* the elder, *is to be bound Apprentice* "unto the above named Mrs. *Mary Tringham*, for the Term of "*ſeven Years*, The ſaid *Mary Tringham* doth hereby covenant and "agree *to pay* unto the ſaid *Abraham Lewis* the younger the Sum "of twenty-five Shillings, the firſt Year of the Seven; and the "four following Years, the Sum of fifty Shillings a Year; and the "ſixth Year, to pay Him the ſaid *Abraham Lewis* the younger, "the Sum of three Pounds; and, the ſeventh and laſt Year, the "Sum of four Pounds; All of good and lawful Britiſh Money."

And

And in the Margin of the ſaid Agreement, are wrote theſe Words, "The *Boy's Time* to *begin* from the *Date*."

ALL SAINT *and* PETER-CHURCH,

The ſaid *Abraham Lewis* the Pauper, entered into the Service of the ſaid *Mary Tringham*; *ſerved her two Years*; and *received the Money* mentioned in the ſaid Agreement, for ſuch Time; then left his Miſtreſs; No *Indentures* of Apprenticeſhip having been *executed* purſuant to ſuch Agreement; and has, ſince, gained no Settlement.

This Court [the Seſſions] is of Opinion, "ſuch Service *gained* a "Settlement in the ſaid Pariſh of *All Saints*;" and doth confirm the ſaid Order: And the ſame is hereby confirmed.

Mr. *Griffith Price* moved, on *Saturday* 25th *November* 1769, to quaſh both theſe Orders; and obtained a Rule to ſhew Cauſe. He denied that the Pauper gained any Settlement in the Pariſh of *All Saints*. He could not be conſidered as an *Apprentice* to Mrs. *Tringham* becauſe *no Indenture* of Apprenticeſhip was ever *executed*: nor could the *Agreement* be eſteemed to *ſupply the *want* of an Indenture; as it was *not ſtampt*.

*V. 31 G. 2. c. 11. § 1.

Mr. *Kenyon* now ſhewed Cauſe. He ſaid, It was not neceſſary to conſider the Pauper in the Light of an *Apprentice*: He might be conſidered as a *Servant*. Every thing here ſtated was *Service*: Nothing was to be learned. And he was paid Wages by his Miſtreſs. He was hired for ſeven Years; and ſerved two of them; and received the Money for that Time, according to the Agreement.

But Mr. *Price* and his Co-Adjutor Mr. *Poole* replied, that the Service here ſtated was manifeſtly under an apprehended *Apprenticeſhip*; and was not nor can be taken in the Light of a Hiring for a Year, and Service for a Year under ſuch Hiring as a common Servant: And the Binding as an Apprentice can't be converted into the Hiring as an ordinary Servant. They cited the Caſe of †*Whitechurch Canonicorum*, as in point. The only Difference between the two Caſes is, that that Pauper was 22 Years of Age; *This*, an Infant.

†*V. ante*, No. 173. pa. 540.

LORD MANSFIELD was gone.

Mr. JUSTICE ASTON was in the Court of *Chancery*.

Mr. JUSTICE YATES—An *Apprenticeſhip* was certainly the Thing in view, in the preſent Caſe: and there was no Indenture ever executed, nor was the Agreement ſtampt. In the Caſe of a *Servant*, there muſt be a *Hiring* for a Year, as well as a Service. But this Pauper was an *Infant*; and therefore could not hire himſelf: And his Father's Agreement could not bind his Infant Son as a Servant; though his Infancy would be no Obſtacle to his being bound as an *Apprentice*. Such a Conſtruction as has been attempted, would evade

All Saints and Peter. Church.

evade the * *Stamp-Act*. He could not gain a Settlement under the Service here ſtated.

Mr. Justice Willes was of the ſame Opinion. This could be no Contract by way of a Hiring for a Year. The *Infant* could not contract to hire Himſelf for a Year. This Caſe is very like that of † *Whitechurch Canonicorum*, where the Pauper was adjudged to have gained *no* Settlement, either as an Apprentice, or as a hired Servant.

Both Orders quashed.

* *V.* 8 *Ann. c.* 9. § 32, & 39.

† *Ante*, No. 173.

Vide ante, No. 94, 102, 104. *Poſt*. No. 227, 262. 2 *Barnardiſt*. 39. S. P.

No. 204.

Rex *v.* Inhabitants of Llanrhydd.

Monday 12th *Feb.* 1770.

A *ſubſiſting* Order, unappealed from, is final, but not a *deſerted* Order.

Two Juſtices of Peace for the County of *Denbigh*, removed *Mary Evans*, and her Daughter and three Sons (naming them, and ſpecifying their reſpective Ages,) from *Llanrhydd* to *Denbigh*. *Denbigh* appealed to the Seſſions. The Seſſions quaſhed the Order of the two Juſtices; ſtating the following Caſe——

Special Caſe ſtated by the General Quarter Seſſions of the Peace holden in and for the County of *Denbigh* on the 4th *April* 1769, upon the Appeal of the Inhabitants of the Pariſh of *Denbigh*, from an Order of two Juſtices (Mr. *Yale* and Mr. *Price*) made on 11th *January* preceding, for removing the Paupers from *Llanrhydd* to *Denbigh*; which Order the Seſſions thereupon quaſhed; and afterwards add the following Words—

And whereas the ſaid Inhabitants of the Pariſh of *Llanrhydd*, not being ſatisfied with the Opinion of this Court, did therefore move, by their Attorney, to have the Facts found ſpecially; Accordingly, the Caſe was agreed by the Court and Attornies, to be as follows—

That *John Middleton*, Eſq; and *John Jones*, Clerk, *removed* the above Paupers, *by an Order*, under their Hands and Seals, dated the 28th Day of *May* 1768, from the ſaid Pariſh of *Llanrhydd* to Ruthin; and the ſame Paupers were accordingly *delivered to the Officers of* Ruthin; who maintained them for a While, and for ſome Time after at the joint Expence of both Pariſhes: And *Notice* of Appeal *to the* ſaid *Order* being ſerved on the Officers of *Llanrhydd*, by the Officers of *Ruthin*, on the Morning of the Quarter-Seſſions, *previous to the filing* of the ſaid Appeal, the *Officers of Llanrhydd* conſented "*to take the Paupers back* to their Cuſtody, without "giving

" giving the Parishioners of RUTHIN the Trouble of appealing " against such Order." And thereupon, the said Parishioners of *Llanrhydd removed* the said Paupers, by Order under the Hands and Seals of *John Yale* and *David Price* Clerks, dated the 11th Day of *January* 1769, from the said Parish of *Llanrhydd* to the Parish of *Denbigh* in the said County; who appealed thereto; and upon such Appeal, the Settlement of the said Paupers was *proved* to be at DENBIGH: But it appearing in Evidence on the Behalf of the Parish of *Denbigh*, " That the said Order of *John Myddleton* and *John* " *Jones*, removing them to *Ruthin* as aforesaid, had NOT *been ap-* " *pealed against.*" The COURT were of opinion " That the said " Order of Removal from *Llanrhydd* to *Denbigh ought to be quashed*;" and *was quashed* accordingly.

LLANRHYDD *and* DENBIGH.

Mr. *Ashhurst* had moved to quash this Order of Sessions; and obtained a Rule to shew Cause. His Objection to the Order of Sessions was, That though the *Principle* upon which they grounded their Opinion is in general right, * namely, " that an Order of Re- " moval submitted to and *not appealed from*, is CONCLUSIVE *upon* " *the non-appealing Parish*, as against all the World;" yet this general Rule is to be understood to relate only to a *subsisting* Order, but not to a *deserted* one: and therefore the Sessions have made a great Mistake in *applying* this general Principle to the particular Case of the present Order (made by Mr. *Myddleton* and Mr. *Jones*) for removing the Paupers from *Llanrhydd*, to *Ruthin*; which, being found to be a wrong one, was by *Consent* of both Parties concerned in it, ABANDONED and DESERTED, and the Paupers taken back again by the Parish in whose Favour it was made; and was consequently at an End, and must be considered as if it *never had existed*. So that, upon the whole Circumstances stated, *Ruthin* was *not* concluded by it; although they had not actually pursued the Appeal, of which they had given Notice, and which they were ready to proceed upon, if *Llanrhydd* had not consented to take back the Paupers.

Mr. *Kenyon* now shewed Cause, on behalf of the Parish of *Denbigh*. He said it was not in the Power of *private Persons* to put an End to the Order for removing these Paupers to *Ruthin*, whilst an Appeal was thus going on against it. The Order has removed them to *Ruthin*. *Ruthin* has not appealed. Consequently

* The general Principle abovementioned may be seen discussed in several of the preceding Cases; *viz.* No. 60. p. 168. No. 67. p. 192, 193. No. 96. p. 276, 277, 278. No. 176. P. 551, 552, 558.

LLANRHYDD and DENBIGH.

Ruthin is concluded, as againſt all other pariſhes, to diſpute their belonging to *Ruthin*.

Lord MANSFIELD—That Order was made in favour of *Llanrhydd:* and *Llanrhydd* gave it up, and conſented to take the Paupers back, without giving *Ruthin* the Trouble of appealing againſt it. May not a Party give up a Judgment intended for his own Benefit?

THE COURT being of Opinion againſt Mr. *Kenyon*, on this Point,

HE then objected to the *Original* Order made for the laſt Removal from *Llanrhydd* to *Denbigh*; for that the County is only mentioned in the *Margin*, and not in the *Body* of it: and he cited 2 Ld. *Raymond* 1304. *Mich.* 8 *Ann.* anonymus; where an Order of two Juſtices was quaſhed upon this Exception, "*Southampton* was "in the Margin; but it was ſaid in the Body of the Order, to be "made by *A.* and *B.* two Juſtices *de Comitatu prædicto:* So it does "not appear that the two Juſtices were of the County; and it "ſhall *not* refer to the Margin." Which the Court agreed; and ſaid "that *prædicto*, in *Orders* or *Indictments don't refer to the* "County mentioned in the Margin; though it does in *Declarations.*" And therefore the Order was quaſhed.

LORD MANSFIELD—That Caſe goes upon the Notion of an Order's being like an Indictment. But an Order of Removal is *not* like an Indictment.

Mr. JUSTICE ASTON ſaid, He thought that Caſe in Lord *Raymond* had been over-ruled: And he had ſome Notion that it was ſo in the Caſe of the *King* againſt *Lloyd* *.

* The Opinions and *Dicta* and even Determinations upon this Point have varied. *Vide Rex* v. *Foſſet p.* 12 *W.* 3. *B. R.* cited *ante*, *p.* 43. and See the Caſe of *Sheringham*, *Trin.* 8 *G.* cited *ante*, p. 40. and of *Underthwaite*, in *Hilary* 9 *G.* cited in the ſame 40th *page*. There was a Caſe of *Rex.* v. *Auſtin*, in *Mich.* 11 *G.* 1724, upon an Order to ſuppreſs an Alehouſe, where the Queſtion was diſcuſſed, though, perhaps not determined: It is likewiſe cited in the foregoing Pages 40 and 43, and may be ſeen reported in a Book commonly called 8*th Modern p.* 309. 310. In *Mich.* 1725, 12 *G.* in a Caſe of *Rex* v. Inhabitants of *Addlethorpe*, upon an Order of Removal, the Objection prevailed; and the Order was quaſhed. In *Hilary* 13 *G.* 1726, *Rex* v. Inhabitants of *Fiſherton*

Fiſherton de la Mere, upon an Order of Removal, the ſame Objection was over-ruled. In *Hilary* 1730, 4 G. 2. upon an Order of Removal, The County being in the Margin only was holden inſufficient; and the Court quaſhed the Order, citing the before-mentioned Caſe of *Rex* v. *Auſtin*. In *Trinity* Term 1732, 5 & 6 G. 2. *Rex* v. *Holland*, upon an Order of Baſtardy, *Wigorn* being in the Margin was holden ſufficient. And in *Eaſter* Term 1733, 6 G. 2. *Rex* v. *Johnſon*, upon an Order of Baſtardy, an Objection of Serjeant *Draper's*, "that the County was only in the Margin, but "not in the Body of it," was over-ruled. However, it is now ſettled "that a Reference to the Margin (if it be a "clear and plain Reference) is ſufficient in an *Order*; though "*not* ſo, in an *Indictment*." *V. ante*, No. 12. *p.* 43. No. 45. *p.* 139. and No. 69. *p.* 200. 201.

LLANRHYDD and DENBIGH.

ORDER of SESSIONS QUASHED: ORIGINAL ORDER AFFIRMED.

Rex *v.* Inhabitants of Merevall. No. 205.

TWO Juſtices removed *Rebeccah Clark*, Single Woman, and *John* her Child, upwards of five Months old, from *Birmingham* in *Warwickſhire* to *Merevall* in *Leiceſterſhire*.

Monday 12th *Feb.* 1770.

The Seſſions confirm the Order of the two Juſtices; It appearing, that the Pauper was hired for, and ſerved a Year in *that Part* of the Pariſh of *Merevall* as is within the County of *Leiceſter*; and that there was an Appointment of an Overſeer of the Poor of *Merevall* by two Juſtices of the County of *Warwick*; to *which Officer* the Pauper was *delivered:* But that there is not now, nor ever was any Overſeer of the Poor appointed for *that Part* of *Merevall* that lies within the County of *Leiceſter*; although there are ſeveral Houſes and Subſtantial Inhabitants in that Part of the Pariſh of *Merevall* that lies in the County of *Leiceſter* aforeſaid. And that the *ſame* Perſon who was *Overſeer*, was alſo *Churchwarden* of the ſaid Pariſh of *Merevall:* and that ſuch Officer has *uſually acted* in the Maintenance of the Poor, *throughout* the WHOLE Pariſh.

A Pauper may be removed to *Part* of a Pariſh, though it have no diſtinct *Overſeer*.

Mr. *Wheler* had moved, on *Saturday* 27th *January*, 1770, to quaſh both theſe Orders. His Objection was, That the Appointment of an Overſeer by the Juſtices for the County of *Warwick*

MEREVALL and BIRMINGHAM.

could not affect *that Part* of the Pariſh of *Merevall* which lies in the County of *Leiceſter*: For, by 43 *Eliz. c.* 2. § 9. "If any Pariſh "extends into more Counties than one, the Juſtices of every Coun- "ty ſhall deal only in *ſo much* of the Pariſh as lies within their "Liberties; and every One *within their Limits*; to execute the "Ordinances concerning the Nomination of Overſeers, *&c.*" Therefore that Part of this Pariſh of *Merevall* which lies in *Leiceſterſhire* muſt be conſidered as *extraparochial*, until Overſeers are properly appointed for it: And no Removal can be made to it, *until* Overſeers or an Overſeer at leaſt ſhall be ſo appointed.

Mr. *Green*, ſupported, by Mr. *Dunning* (Solicitor General,) now ſhewed Cauſe. They ſaid, The *Churchwardens* are ſufficient Officers in this Reſpect: They are *Overſeers*, to this Purpoſe.

THE COURT, being clearly of Opinion with them, diſcharged the Rule obtained by Mr. *Wheler*.

BOTH ORDERS AFFIRMED.

Vide ante, No. 129.

No. 206.

Rex *v.* Inhabitants of Brandninch.

Monday 12th *Feb.* 1770.

A *Special* Hiring *by the Week*, with an Agreement to part at a Fortnight's or Month's Notice, will not gain a Settlement.

TWO Juſtices removed *William Davy*, *Mary* his Wife, and their three Children, (ſpecifying their Names and Ages,) from *Brandninch* to *Shobrooke*; Both in the County of *Devon*. Their Order was confirmed by the Seſſions, on a Caſe ſtated.

THE CASE ſtated upon the Order of Seſſions was this—— The Pauper came to one *Samuel Ruddall*, in the Pariſh of *Crediton*; and agreed to live with him *by the Week*, at *two Shillings* and *Sixpence per Week*; and to *part at a Fortnight's or Month's Notice*. The Pauper being aſked "how long he intended to live with Mr. *Rud-* "*dall*," replied, "He did not know; but, *as long as they liked*." And accordingly, the Pauper lived with Mr. *Ruddal* for eight Years, under that Agreement; the Pauper and Maſter being both at Liberty to part from Each Other on a Fortnight or Month's Notice. The Pauper received his Wages of two Shillings and Sixpence *per* Week, ſometimes at the End of the Week, ſometimes at the End of a Fortnight, and ſometimes longer, as he wanted Money. This Court [of Seſſions] being of Opinion "that the Pauper *gained* a Settlement "*by ſuch Service* in the ſaid Pariſh of *Crediton*," doth therefore vacate the ſaid Order: And the ſame is hereby vacated accordingly.

Mr.

Mr. *Mansfield* had moved, on *Saturday* 27th *January* 1770, to quash this Order of Seſſions; objecting "that here was *no Hiring* "*for a Year:*" And he had a Rule to ſhew Cauſe.

BRANDNINCH *and* SHORROCKE.

Mr. *Heath* now ſhewed Cauſe; and endeavoured to maintain "that this was a Hiring *by the Year.*" Every *general* Hiring is a Hiring by the Year: And ſo the Law ſhall conſtrue it; For, that Retainer is according to Law. *Co. Litt.* 42. *b.* lays this down expreſsly. And this is a Sort of general Hiring. It can't be taken as a Hiring by the *Week only*; becauſe they were not to part but at a *Fortnight's* or a *Month's* Notice: which is inconſiſtent with the Idea of a Hiring only by the *Week*. But,

Vide ante, No. 107. and the Caſes there cited, p. 301.

THE COURT, without hearing the Counſel on the other Side, over-ruled Mr. *Heath's* Argument. And

LORD MANSFIELD obſerved, that this Pauper was under *no Obligation to ſerve for a Year:* whereas, in order to gain a Settlement, there muſt be an *Obligation* upon the Pauper, to ſerve for a Year.

ORDER of SESSIONS QUASHED: ORIGINAL ORDER AFFIRMED.

V. ante No. 98. *p.* 280. and No. 165. *p.* 513. and No. 202. *p.* 653.

Eaſter Term

10 Geo. 3. 1770.

No Settlement-Caſe was determined within this Term.

Trinity

Trinity Term

10 Geo. 3. 1770.

No. 207.

Rex *v.* Inhabitants of Kirkby Stephen.

Friday 15th *June* 1770.

Order of Removal to a PARISH, conſiſting of ſeveral TOWNSHIPS, is binding upon the *Townſhip*, to which it is *delivered*, if not appealed from.

TWO Juſtices removed *William Blenharn Greer*, *Jane* his Wife, and their Children *Jane*, *Robert*, *Thomas*, *Elizabeth*, *Mary*, and *Catherine*, from the *Townſhip* of *Kirkby Stephen* in the County of *Weſtmoreland* to the *Townſhip* of *Wharton* in the ſame County. Upon an Appeal from their Order, The Seſſions quaſh it; ſubject to the Opinion of this Court, upon a Caſe ſtated on the Order of Seſſions. *viz.*

That the ſaid Pariſh of *Kirkby Stephen*, conſiſts of *ten different Townſhips*, who maintain their Poor reſpectively and have ſeparate Overſeers: Of which, the ſaid Townſhip of *Kirkby Stephen*, and the ſaid Townſhip of *Wharton*, are Two.

That the Pauper was *originally ſettled* in the ſaid Townſhip of *Wharton*, and rented a Tenement of 22 *l. per Annum* in the ſaid *Townſhip* of WHARTON for four Years, and lived upon it for three Years and upwards; and in the fourth Year went to the ſaid *Townſhip* of KIRKBY STEPHEN, to aſſiſt his Siſter as a Shopkeeper; and LODGED there with Her *upwards of* 40 *Days*; during which Time, He went daily to occupy and manage his ſaid Farm in *Wharton*.

That he afterwards went to *Newport* in the County of *Salop*: where he married, and had five Children; and being likely to become chargeable there, *was removed*, by the Order of two Juſtices of the ſaid County of *Salop*.

That ſome Time in *February* 1768, the Overſeers of the Poor of the ſaid Pariſh of *Newport* brought the ſaid Pauper, his Wife and Children with the ſaid Order, to *Thomas Petty* then *Overſeer* of the Poor of the ſaid *Townſhip* of *Kirkby Stephen*; and delivered the ſaid

ſaid Order to Him: who, having read the ſaid Order, ſaid, "The "Pauper did *not belong* to *Kirkby Stephen*, but to *Wharton*; and "that he had rather the Pauper belonged to *Kirkby Stephen* than "to *Wharton*, as He (the Overſeer) had a better Eſtate in *Whar-* "*ton* than in *Kirkby Stephen*;" and then went away, leaving the Order of Removal with the Overſeer of *Newport* and the Pauper.

A COPY of the Order of Removal from *Newport* was offered to be given in Evidence; *Notice* having been given to the Overſeers of the Poor of the ſaid *Townſhip* of *Kirkby Stephen* and to the Pauper, "*to produce the Original* Order," and the Overſeers called on for that Purpoſe; but the *Original* Order *was not produced*: on which, the Court *admitted* in Evidence the COPY written by the Pauper and proved by him to be a *true* Copy. Which Copy is in the Words and Figures following—

"*Shropſhire—to wit*—To the Churchwardens and Overſeers of "the Poor of the Pariſh of *Newport* in the ſaid County, and "the Churchwardens and Overſeers of the Poor of the *Pariſh* "of *Kirkby Stephen* in the County of *Weſtmoreland*, and to "Each and Every of them.

"Upon the Complaint of the Churchwardens and Overſeers of "the Pariſh of *Newport* aforeſaid, in the ſaid County of *Salop*, "unto Us whoſe Names are hereunto ſet and Seals affixed, being "Two of his Majeſty's Juſtices of the Peace in and for the ſaid "County of *Salop*, and one of Us of the *Quorum*, That *William* "*Greer*, *Jane* his Wife, and their five Children, *to wit*, *Jane* aged "11 Years, *Robert* aged 9 Years, *Thomas* aged 7 Years, (they not "having gained any Settlement ſince their Birth,) and *Elizabeth* "and *Mary*, Both Infants under the Age of ſeven Years, have "come to inhabit in the ſaid Pariſh of *Newport*, not having gained "a legal Settlement there, nor produced any Certificate owning "themſelves to be ſettled elſewhere; and that the ſaid *William* "*Greer*, *Jane* his Wife, and their ſaid Children are likely to be "chargeable to the ſaid Pariſh of *Newport*; We the ſaid Juſtices, "upon due Proof made thereof, as well upon the Examination of "the ſaid *William Greer* upon Oath as otherwiſe, and likewiſe upon "due Conſideration had of the Premiſſes, DO ADJUDGE the ſame "to be TRUE: And we do likewiſe adjudge that the lawful Set- "tlement of them the ſaid *William Greer*, *Jane* his Wife, and "their ſaid Children is in the ſaid PARISH of *Kirkby Stephen*. We "do therefore require you the ſaid Churchwardens and Overſeers "of the Poor of the ſaid Pariſh of *Newport* or ſome or one of You, "to

KIRKBY STEPHEN and WHARTON.

" to convey the ſaid *William Greer*, *Jane* his Wife, and their ſaid " Children, from and out of the ſaid Pariſh of *Newport* to the ſaid " PARISH of *Kirkby Stephen*; and them to deliver to the Church- " wardens and Overſeers of the Poor there, or to ſome or One of " them, together with this our Order, or a true Copy thereof. And " we do hereby require You the ſaid Churchwardens and Overſeers " of the Poor of the ſaid PARISH of *Kirkby Stephen* to receive and " provide for them, as Inhabitants of your PARISH. Given under " our Hands and Seals, the ſixth Day of *January* in the Year 1768.

" *Edw. Cludde*,
" Mr. *Fothergill*, This is a *true Copy* of the " *Edw. Pemberton*."
" Order had at *Wellington* in *Shropſhire*."

That about a Week after the Time he was brought to *Kirkby Stephen* as aforeſaid, the Pauper *William Blenharn Greer* went to *Wharton*, and delivered the original Order of Removal from *Newport* to the PARISH *of Kirkby Stephen*, to *John Hartwell*, who, he had been informed, was Overſeer of the Poor of *Wharton*; who, having read the Order, ſaid " He would do nothing in it, till they " had a Meeting;" and returned the Order to the Pauper.

That ſome Time afterward, the Pauper was applied to, by *Robert Fothergill* an Inhabitant of *Wharton*, for a Copy of the Order of Removal: which the Pauper wrote, and delivered to him; and which was the Copy produced and admitted in Evidence.

That the Pauper remained in *Kirkby Stephen*, and was maintained by his Siſter in the *Townſhip of Kirkby Stephen* for near a Year and a Half; when, his Siſter dying, he aſked Relief of the Overſeers of the Poor of the Townſhip of *Kirkby Stephen*.

It *did not* appear any APPEAL was made againſt the Order of Removal from *Newport*: But the Pauper had that Order from the Time that *Petty* left it; and was carried, together with it, by the Overſeers of the Poor of the Townſhip of *Kirkby Stephen*, before two of his Majeſty's Juſtices of the Peace for the ſaid County of *Weſtmoreland*; where the Order was either left with the ſaid Juſtices, or delivered to *Matthew Thompſon* one of the Overſeers of the Poor of the Townſhip of *Kirkby Stephen*; the Pauper not having ſince ſeen it. Upon which, this Court [the Seſſions] being of Opinion, "That the " ſaid laſt-mentioned Order for the Removal of the Pauper and his " Family from the *Townſhip* of *Kirkby Stephen* to the *Townſhip* of " *Wharton*, be quaſhed and made void," the ſame is hereby quaſhed

and made void accordingly; ſubject nevertheleſs to the Opinion of his Majeſty's Court of King's Bench, upon the Caſe above ſtated.

Mr. *Wallace* had moved, on *Saturday* 12th *May* 1770, to quaſh this Order of Seſſions; and had obtained a Rule to ſhew Cauſe.

His Reaſons for quaſhing it, were, That the Pauper's legal Settlement was in the Townſhip of *Wharton*, where his Tenement and Farm lay: His *Domicil* was there, and not in the Townſhip of *Kirkby Stephen*. And the Townſhip of *Kirkby Stephen* are *not precluded* by any Thing here ſtated, from diſputing the Pauper's Settlement with *another Townſhip* in the *ſame Pariſh*. The Order of the two Juſtices removes from *Newport* to the PARISH of *Kirkby Stephen*: And the *Pariſh*, 'tis true, have not appealed againſt it. But the Pariſh at large conſiſts of *ſeveral Townſhips*: Which ſeveral Townſhips are not affected, as *between one and another of theſe particular Townſhips*, by the non-appealing of the Pariſh at large. It may be too late to diſpute the Settlement of the Paupers being within the *Pariſh*: But there can be no Pretence to ſay, that their Settlement being acknowledged to be within the Pariſh at large, ſhould fix it in One of its *Townſhips* rather than Another; or preclude One of theſe Townſhips from diſputing it with *another of them*. This is conſiſtent with a Conceſſion "that the *Pariſh* to which Paupers are "removed, are bound by not appealing."

Mr. *Dunning* and Mr. *Wilſon* now ſhewed Cauſe, on behalf of the Townſhip of *Wharton*. They agreed, that the legal Settlement was in the Townſhip of *Kirkby Stephen*; where the Pauper lodged, ſlept, and reſided above forty Days; not as a caſual Reſidence, but as a complete Change of Reſidence, and from whence he was irremoveable during all the Time he remained there. This was his Domicil: He had left *Wharton*, and changed his Domicil which once was there. But, be that as it may, They inſiſted, that the Townſhip of *Kirkby Stephen* was *bound and concluded* by the Order of Removal from *Newport* to *Kirkby Stephen*, unappealed from. This original Order calls *Kirkby Stephen* "a *Pariſh*," though it is only a Townſhip: But that Miſtake will not vary the Law. They ought to have appealed: And upon an Appeal, they might have availed themſelves of that Miſtake, or of the Merits, if they had any. But not having appealed they are concluded, as againſt *every* Body, as againſt all the World *. And they cited *Viner's Abridgment*, Title *Removal*, pa. 468 II. Letter 11. pl. 5. as in Point. There the Removal was to the Pariſh of *Stepney*; who did not appeal: And *Spittleſields*, a

* *V. ante*, p. 19.

KIRKBY STEPHEN and WHARTON.

Hamlet of *Stepney* was bound. And it is there ſaid, "that Juſ-
"tices of the Peace are not obliged to take Notice of the Diviſions
"of Pariſhes."

Mr. *Wallace* and Mr. *Morton*, *contra*, on behalf of the Townſhip of *Kirkby Stephen*, urged, That the Paupers were never received by the Townſhip of *Kirkby Stephen*; That the legal Settlement was clearly in *Wharton*; That the merely Lodging in the Townſhip of *Kirkby Stephen* was a caſual Reſidence, and could give no Settlement; and that the Townſhip of *Kirkby Stephen* were not concluded by the not appealing from the original Order of Removal from *Newport*. They ſaid, that if they had appealed, the Determination muſt have been againſt them: For, the Order removed the Paupers to the *Pariſh* of *Kirkby Stephen*; and it is agreed on all Hands, that their legal Settlement was within the *Pariſh*; and it is agreed, that the Juſtices are not bound to take Notice of the Diviſions of Pariſhes; and the Townſhip of *Wharton* is ſtated and agreed to be a Diviſion of this Pariſh and within it. Conſequently, the Seſſions muſt have determined againſt Us, upon an Appeal.

Mr. JUSTICE BLACKSTONE thought that this Caſe falls within the Rule which is mentioned in the Caſe of *Thackham* and *Findon*, in 2 *Salk.* 489. pl. 52. "that an Order of two Juſtices, not appealed
"from, binds the Pariſh upon which it is made, * till a new Settle-
"ment is gained." And he recited the Caſe of *Spittlefields* and *Bromley*, P. 11 *Ann. B. R.* mentioned in *Viner*, Title *Removal*, pa. 468. pl. 5. Where a poor Perſon having been ſent to the *Pariſh* of *Stepney*, who did not appeal, Exception was taken, "that the Remo-
"val ought to have been to the HAMLET *of Spittlefields*: For *Step-
"ney* is divided into *four Townſhips*, and the Poor have been remo-
"ved *from one Townſhip to another* in the *ſame Pariſh*; and the
"† Statute takes Notice of Townſhips, as well as Pariſhes; and
"*Spittlefields* is a *Hamlet* of *Stepney*." But the Court held,
"that if a Perſon is removed to a wrong Place, *that Place* ought to
"appeal: And ſo *Stepney* ought to have done, if it were a wrong
"Place; or elſe the Matter will be concluſive upon them. But this
"is a Matter here out of the Record. Juſtices of the Peace are *not
"obliged to take Notice* of the Diviſions of Pariſhes into Hamlets and
"Townſhips which maintain their own Poor ſeverally and diſtinct-
"ly. And *Stepney* here, upon an Appeal, might have ſhewn that
"the Perſon did belong to the Hamlet of *Spittlefields*: which might
"have been a reaſonable Cauſe to diſcharge the Order. Two Ham-
"lets within a Pariſh are the ſame as two Pariſhes: Yet Church-
"wardens

* See alſo, *ante*, No. 96. pa. 277.——

† *V.* 13 & 14 *C.* 2. *c.* 12. § 21.

KIRKBY STEPHEN and WHARTON.

"wardens are Overſeers of the Poor of the whole Pariſh, though "ſo divided; and have a Superintendency over the whole Ham-"lets and Townſhips."

LORD MANSFIELD—The Original Order, made for the Removal from *Newport* to the Pariſh of *Kirkby Stephen*, muſt mean the Townſhip of *Kirkby Stephen*: The Townſhip was *as* a Pariſh, for this Purpoſe, of a Removal to it; the Poor within the Pariſh not being maintained by the *whole* Pariſh, but by the particular Townſhips to which they *reſpectively* belong. The *Townſhip* of *Kirkby Stephen* ought, in this Caſe, to have appealed: They could not get rid of this Order, but by appealing. And if they had appealed, the Truth might have appeared: And when the Facts had appeared to the Juſtices, upon the whole Truth being diſcloſed, the Paupers might, in the End of the Inquiry, have been ſent to *Wharton*.

Per Cur.

RULE DISCHARGED: ORDER of SESSIONS * AFFIRMED.

* *N. B.* I have ſeen a printed Report of this Caſe, which ſays "that the ORDER of SESSIONS was QUASHED." But I aſſure the Gentleman who publiſhed it, "that it was AFFIRM-"ED:" I have examined the Rule-Book, and find it ſo.

Rex *v.* Inhabitants of Newſtead. No. 208.

Friday 15th *June* 1770.

Hiring and *Service from Whitſuntide to Whitſuntide*, according to the *Cuſtom of the Country*, will gain a Settlement.

MR. *Wallace* moved on *Thurſday* 10th *May* 1770, for a Rule upon the Proſecutor, to ſhew Cauſe why the Order of Seſſions made for reverſing the Original Order of two Juſtices made for the Removal of *Frances Downey*, Spinſter, from the Townſhip of *Newſtead* in the Pariſh of *Balmbrough* in the County of *Northumberland*, to the Pariſh of *Holy Iſland*, in the County of *Durham*, ſhould not be quaſhed; and alſo why the ſaid Original Order ſhould not be affirmed.

The Caſe was ſpecially ſtated, upon the Seſſions-Order. *Frances Downey*, being a Single Woman and unmarried, hired herſelf *at Whitſuntide* 1767, to *Thomas Hill* an Inhabitant and Houſekeeper in the ſaid Pariſh of HOLY ISLAND *to ſerve Him for a* YEAR from the

NEWSTEAD and HOLY ISLAND.

ſaid Whitſuntide to the *Whitſuntide* following, at certain Wages. The ſaid *Frances Downey* entered upon the ſaid Service, at *Whitſuntide* 1767, and *continued therein* TILL WHITSUNTIDE 1768, accordingly: When She *received a Year's Wages* from her ſaid Maſter, for ſuch Service.

It ſtates, That it hath been USUAL *in this Country*, to hire Servants *from* WHITSUNTIDE *to* WHITSUNTIDE: And that an Hiring and Service *from* WHITSUNTIDE *to* WHITSUNTIDE has *always*, by the contracting Parties, been DEEMED *a Year's Service*; and agreeable thereto, the Maſter hath *always paid* the Servant a *full* Year's Wages for ſuch Service, *without* any Diminution thereof or Addition thereto, and *without* making any Diſtinction or Difference whether the Space of Time between the one *Whitſuntide* and the other conſiſted of more or leſs than 365 Days.

Some of his Majeſty's Juſtices of the Peace at this Seſſions are of Opinion, "that a general Hiring and Service from one *Whitſuntide* "to another, without mentioning ſuch Hiring and Service to be "*for a Year*, would make a *good* Settlement."

Nevertheleſs, it appearing to this Court [of Seſſions] in *this* Caſe, "that the Space of Time between *Whitſuntide* 1767 and *Whitſun-*"*tide* 1768, conſiſted of LESS than 365 Days; and was NOT *a* "*complete Year*."—

It is therefore ORDERED, by the ſaid Court of Seſſions, That the ſaid Order of Removal be REVERSED.

Mr. *Wallace* alledged this to be a ſufficient Hiring and Service for gaining a Settlement; and obtained a

RULE *to ſhew Cauſe why this Order of Seſſions ſhould not be quaſhed; and the Original Order affirmed.*

Mr. *Dunning* now ſhewed Cauſe; and urged that no Settlement was gained in *Holy Iſland*, by this Hiring and Service, which were Both of them incomplete; Both being for *leſs* than a Year, and ſhort of 365 Days: Whereas the Hiring muſt always be for a complete Year, and can't be diſpenſed with; and the Service ought to be ſo too. Indeed the Court have ſometimes relaxed a little, as to the Service; but never, as to the Hiring. To prove which, he cited the Caſes of * *Frencham* and *Pepperharrow*. *P.* 1 *G.* 1. † *Comb* and *Weſt-Woodhey*. *H.* 5 *G.* 1. *Rex v.* Inhabitants of ‖ *South Cerney*, *P.* 5 *G.* 2. [See alſo, *ante*, No. 55. *Rex v.* Inhabitants of *Newton*.] But,

* *V. Foley's* Poor Laws, pa. 144 and Seſſions Caſes Ed. 1750. Vol. 1. pa. 7. and 1 Sir *T. S.* 83.

† *V. ante*, pa. 160, in Margine.

‖ *V. ante*, pa. 158.

THE

Newstead and Holy Island.

The Court, consisting of Lord Mansfield, Mr. Justice Willes, and Mr. Justice Blackstone, (for Lord Commissioner Aston was engaged in the Court of Chancery,) were unanimous "that the Pauper *gained* a Settlement in *Holy Island*, un-"der this Hiring and Service." This is stated to be the *usual* Way of hiring Servants in this County, and such Service *always deemed* to be a Year's Service. There are many of the Clergy, in *Durham*: They compute from ecclesiastical Days. It is stated as a Hiring "to serve *for a Year*," though it is indeed added, "from *Whitsun-*"*tide* to *Whitsuntide*." Parish-officers are, by 34 *Eliz.* to be appointed in *Easter*-week, or within one Month after *Easter*, (which is a moveable Feast:) Yet they are considered as executing the Office a whole Year, though it may fall short of 365 Days. There is no Case that proves the absolute Necessity that the Hiring should be for exactly 365 Days *.

Order of Sessions quashed: Original Order affirmed.

* *Vide ante*, No. 55. *contra*. *Post*. No. 222. *accord*. *Doug*. 423. *contra*. And the Case of *The King against the Inhabitants of Syderton*, or *Syderstone cum Bernes*, (*E*. 17 *Geo*. 3.) there cited, *in notis*, and reported in 3 *Burn*. Ed. 1785. p. 426. *accord*.

Rex *v.* Inhabitants of St. Agnes.

No. 209.

Tuesday 3d. *July* 1770.

Hiring for a Year, and *Service* under it, at certain *limited* Times, *according to the Custom of the Country*, will gain a Settlement.

Mr. *Dunning* moved, on *Saturday* 23d *June* 1770, to quash an Order of Sessions which discharged an Order of two Justices made for the Removal of *Mary Nicholls* and her six Sons and Daughters, (specifying their Names and Ages), from St. *Agnes* to *Redruth*, Both in *Cornwall*.

The special Case stated on the Order of Sessions was this—

William Nicholls the late Husband and Father of the Paupers, when two Years of Age only, went with his Father (who was at that Time settled at *Redruth*) into the Parish of St. *Agnes*: And when He was about 15 or 16 Years of Age, the Father made a Contract with one Mr. *Nankivell* (who then lived in the adjoining Parish of * *Perranzabulo*) for his Son to work at the said Mr. *Nankivell's* Stamps situate in the said Parish of St. *Agnes*, (which Stamps are Mills wherein several Labourers, Men and Boys, are employed in cleansing and manufacturing Tyn), *for one Year*, at the yearly Wages of *L*. 5. In pursuance of which Contract, the said *William Nicholls* served the said Mr. *Nankivell*, at his aforesaid Stamps, for said

* *Peran* in the *Sandes*, v. Sir *Henry Spelman's Villare Anglicum*.

St. Agnes and Redruth.

ſaid Year, by working therein daily, *except Holidays and Sundays, according to the Cuſtom of Tinners:* And his Father received his Wages, as he had Occaſion for it. But during the ſaid Year, the ſaid *William Nicholls* eat drank and lodged with his Father in the ſaid Pariſh of St. *Agnes*; ſerving the ſaid Mr. *Nankivell* at his *Stamps* aforeſaid, and in no other Capacity; nor ever became a Part of his Family.

At the Expiration of the firſt Year, a like Bargain was made, for another Year, at Seven Pounds; and a like Service under it; and ſo on for another Year: But during the ſaid *laſt two Years* alſo, ſaid *William Nicholls* ſerved ſaid Mr. *Nankivell* in ſaid *Stamps*, and in no other Capacity; continuing to *eat drink and lodge with his Father*, and never becoming any Part of his *Maſter's* Family; and having *Holidays and Sundays at his own Command* during the three Years, as is *uſual* for Perſons hired in ſuch Employ.

Upon due Conſideration thereof, This Court [the Seſſions] doth adjudge, that the ſaid Order of Removal be, and the ſame is hereby *diſcharged*. And then they order the Paupers to be reconveyed from *Redruth* to St. *Agnes*, to be there provided for.

Mr. *Dunning* objected, That *William Nicholls* gained *no* Settlement at St. *Agnes*, and obtained a

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Rule *to ſhew Cauſe why the Order of Seſſions ſhould not be quaſhed, and the Original Order affirmed.*

Mr. Serjeant *Burland* now ſhewed Cauſe. He contended, that here was a *Hiring for a Year*, without any *Exception:* And the *Service* was according to the *Cuſtom*, and as is *uſual* for Perſons hired in ſuch Employ. It is therefore a complete Hiring and a complete Service in St. *Agnes:* And the Paupers are legally ſettled there. In the Caſe of * *Macclesfield*, the Hiring was *with* an Exception: Here, 'tis *without* any. In the Caſe of † *King's Norton*, the Pauper was holden to be ſettled at *Camden*, though ſhe ſpun only by the Stone.

* *Vide ante*, No. 146. pa. 458.
† *Ante*, No. 52. pa. 152.

Mr. *Dunning* replied, that this is rather the Caſe of a Journeyman, than of a hired Servant. He was reſident with his *Father:* He was his *own Maſter*, except as to performing the ſtipulated limited Service at the Stamps. He was only to do that *particular* Service: The Maſter had no Right to employ Him in any *other*. And *Sundays and Holidays* were *abſolutely his own*, without any Control from the Maſter. *This* Contract is in Effect the ſame as that in the *Macclef-*

* *Macclesfield* Case was. There, the Pauper was to be his own Master and at his own Liberty the whole *Sunday* and all the Rest of the other Days except the eleven Hours: Whereas the Act of 3 & 4 *W. & M. c.* 11. † intends only such Services where the Servant is under the Command and Control of the Master during the whole Year. The present Case is exactly like that Case: And in this Case, the Exception must have been equally understood at the Time of the Hiring, though not particularly expressed.

* *Vide ante*, No. 146. pa. 458.

† *V. ante*, pa. 460.

The whole Court (which was now full) were unanimous "that *William Nicholls* gained a Settlement in St. *Agnes*."

They held this to be an entire Contract for a Year, without any Exception contained in it: And the Service was according to the *Custom* of the Country. And they made a Distinction between the Exception's being *Part of the Original Contract*, and its not being so: The Question turns upon this Distinction. In the Case of *Macclesfield*, it was Part of the Original Contract: Here, it is not so. And they mentioned the Case of *Bishop's Hatfield*; which may be seen, *ante*, No. 141. pa. 439.

Rule discharged: And Order of Sessions affirmed.

V. post. No. 218. *Rex v.* Inhabitants of *Buckland Denham.*

Michaelmas Term

11 Geo. 3. 1770.

No Settlement-Case was determined within this Term.

Hilary

Hilary Term

11 Geo. 3. 1771.

No. 210. **Rex *v.* Inhabitants of Lowther.**

Tuesday 12th *Feb.* 1771.

HIRING from *Half-year* to *Half-year*, will not gain a Settlement.

TWO Juſtices removed *Catharine Nicholſon*, Single Woman, from *Great Salkeld* in the County of *Cumberland*, to *Lowther* in the County of *Weſtmoreland*: And the Seſſions, upon an Appeal, confirm their Order; ſubject to the Opinion of this Court upon the following Caſe.

Special Caſe ſtated on the Order of Seſſions.

The Pauper, at the Age of 25, HIRED Herſelf as a Servant, with one *William Thompſon* of *Hackthorpe-Hall* in the ſaid Pariſh of *Lowther*, *from Whitſuntide*, as the Pauper believed, about four Years ago, to *Martinmas*; and before the Expiration of that Term, hired Herſelf again to the ſaid *Thompſon*, at *Hackthorpe*, for the ſucceeding Half-year *from the ſaid Martinmas* to the *Whitſuntide following*; and *in purſuance of theſe Hirings*, SERVED the ſaid *William Thompſon*, at *Hackthorpe* aforeſaid in the ſaid Pariſh of *Lowther*, for the *complete Year*, *viz.* from *Whitſuntide* to *Martinmas*, and from the ſaid *Martinmas* to *Whitſuntide*, without leaving her Service; and received the two Half-years Wages.

That after ſuch Service, the Pauper went upon a Viſit to a Relation, who lived in the Pariſh of *Great Salkeld*; and being likely to become chargeable there, was removed to the Pariſh of *Lowther*, as her laſt legal Settlement; not having gained any ſubſequent One, nor having any other Settlement in the ſaid Pariſh of *Lowther*.

That the *uſual Cuſtom* of hiring Servants in *Cumberland* is from *Half-year* to *Half-year*.

That

That it has been the *invariable Practice* of the Quarter-Seſſions of *Cumberland*, as long as can be remembered, "to adjudge, the "*ſaid Hiring for two ſucceſſive Half-years*, and *Service in purſuance* "*thereof* for one *whole Year* with the *ſame Perſon* and in the *ſame* "*Place*, ſhould be a SETTLEMENT under the ſeveral Acts of Par-"liament made relating to the Settlement of the Poor."

LOWTHER and GREAT SALKELD.

And the Court [of Seſſions] being of Opinion "that the ſaid "*Catherine Nicholſon* gained a Settlement thereby, in the ſaid Pariſh "of *Lowther*," doth order that the ſaid Warrant of Removal be *confirmed*: And the ſame is hereby confirmed accordingly; Subject, nevertheleſs, to the Determination of the Court of *King's Bench* on the aforeſaid State of the Caſe.

Mr. *Davenport* had (on *Monday* next after 15 Days of St. *Hilary* in this Term) moved to quaſh both theſe Orders; as here was *no Hiring for a Year*.

Mr. *Wallace* was to have now ſhewed Cauſe, on behalf of the Pariſh of *Great Salkeld*: But he candidly acknowledged "that the "Orders could not be ſupported; there being no *Hiring for a* "*Year*."

THE RULE was made abſolute for quaſhing the Original Order of Removal to *Lowther*, and alſo the Order of Seſſions made in Confirmation of it.

BOTH ORDERS QUASHED.

V. ante, No. 55. No. 165. & No. 209. 1 *Salk.* 535. *Poley*, 134. 3. *P.*

Rex *v.* Inhabitants of Madington. No. 211.

Tueſday 12th *Feb.* 1771.

TWO Juſtices removed *Robert Carter* from *Madington* in *Wiltſhire*, to the Pariſh of *Wilsford* and *Lake* in the ſame County. The Seſſions upon an Appeal, quaſh their Order; ſtating the Caſe ſpecially.

Abſence *through Sickneſs*, at the *End* of the Year, will not defeat a Settlement by *Hiring* and *Service*.

The Special Caſe ſtated upon the Order of Seſſions, was this—

The ſaid *Robert Carter*, the Pauper, being before ſettled at *Madington*, was about eight Years ago hired, three Weeks before *Michaelmas*, to *Richard Chandler* of *Wilsford* and *Lake*, to ſerve Him as a Carter, *for a Year, from Michaelmas* then next. About *three Days after Michaelmas*, he entered on his Service with *Chandler*, and continued in the ſame *'till about three Weeks before the next Mi-*

MADINGTON and WILSFORD and LAKE.

chaelmas; when, having been *kicked by one of his Maſter's Horſes*, he *went home to his Friends* at *Shrewton*, about five Miles diſtant, *without his Maſter's Knowledge or aſking his Leave*, to *cure his Leg*; *and continued there during the Remainder of the Year*, and *never returned* to his Maſter, except for his Wages, ſome ſhort Time after *Michaelmas*; when he was paid the Whole, except ſix Shillings, which the Maſter *deducted* on account of the ſaid Abſence; which the Pauper conſented to. This Court [the Seſſions] doth therefore *quaſh* the ſaid Order.

Mr. *Head* had moved (on *Saturday* next after the Octave of *St. Hilary*, in this Term,) to quaſh this Order of Seſſions; and had a Rule to ſhew Cauſe.

Mr. *Dunning* and Mr. *Widmore* now ſhewed Cauſe, on behalf of the Pariſh of *Wilsford* and *Lake*; and contended, that the Pauper did *not* gain any Settlement there. They argued, that this was a *Deſertion* of the Service. It does not appear that it was neceſſary for him to go Home; or that he could not return again; or that he was diſabled by this Kick, from being able to perform his Service, at leaſt in ſome Degree; or that the Maſter knew where he was. And nothing ſhall be preſumed, that is not ſtated: It ſhall rather be preſumed, that the Seſſions have acted rightly. He could not have maintained an Action for the whole Year's Wages: For he did not ſerve it.

They mentioned the Caſe of *Chriſtchurch*, relating to Mr. *Lemonier's* Servant, and alſo the Caſe of *Iſlip*; and endeavoured to diſtinguiſh this Caſe from them. The former may be ſeen, *ante*, No. 158. pa. 494. and the latter is therein cited. In the former Caſe, they obſerved, that the Maſter knew of the Abſence, and aſſented to it: In the latter Caſe, there was an inhuman Refuſal of a reaſonable Requeſt.

Mr. Serjeant *Burland* and Mr. *Morris* urged, on behalf of the Pariſh of *Madington*, that the Pauper gained a Settlement by ſerving as is here ſtated. He was diſabled by a Kick from his Maſter's Horſe. The Maſter was obliged to take Care of him * The Pauper did not *deſert* his Maſter's Service: He went Home, only to be *cured*; which imports an *Animus redeundi*, when He ſhould be cured. He had a good Reaſon for going to his Friends: and it ſhall be preſumed, that the ſame Reaſon continued, and prevented his Return. The Maſter ought not to have deducted the ſix Shillings.

* *V. ante*, pa. 497.

In

In both the Cases that have been mentioned, Settlements were gained: and there is no Difference between the Beginning, Middle, or End of the Year, in the Case of * Sickness.

MADINGTON *and* WILSFORD *and* LAKE.

LORD MANSFIELD was gone.

THE other THREE JUDGES were of Opinion, that the Servant gained a Settlement by the Service here stated: And they thought it to be within the Reason of the Determination of the *Islip* Case. Here, the Cause of his going home to his Friends clearly and fully appears to have been, to cure his Leg, which had been hurt in his Master's Service and by a Kick from his Master's Horse. This was a reasonable Cause of Absence: It did not dissolve the Contract, nor hinder his gaining a Settlement. The Abatement of Part of his Wages was unreasonable: The Master ought not to have deducted any thing upon this Account. It was not like Running away or Desertion of his Service. It is sufficiently stated, that his going was grounded upon a reasonable Cause, "to get cured of his Hurt." It is not indeed precisely stated, that it was absolutely necessary for Him to go Home to his Friends for this Purpose, or to continue with them so long as he did. But the Justices had the whole Evidence before them; and if it had been otherwise, they would probably have stated it. Here was no Fraud. We should lean in favour of Settlements. Upon the Whole, it seems to be a sufficient Excuse, and within the Principle of the *Islip* Case.

* *V. ante*, pa. 497, 498.

ORDER of SESSIONS QUASHED: ORIGINAL ORDER AFFIRMED.

V. post. No. 215. Rex, v. Inhabitants of *Rest.*

Rex *v.* Inhabitants of St. Margaret's New Fish street. No. 212.

Tuesday 12th *Feb.* 1771.

Renting a *Stable*, of the Yearly *Value* of 10*l.* under a Contract *principally* respecting Horses, will gain a Settlement.

TWO Justices removed *Ann Harris* and five other Children (specifying their Names and Ages) of *Richard Harris* deceased, by his late Wife *Elizabeth* also deceased, from *Clapham* in *Surrey* to *St. Margaret's New Fish-street* in the City of *London*. The Sessions, upon an Appeal, confirm the Order of the two Justices; stating the following Case—

That in or about the Year 1757, *John Small*, Esq; then and now residing and dwelling in his own House at *Clapham* in the County of

St. Margaret's and Clapham.

of *Surrey*, contracted with and employed the Pauper's Father, to *ſupply* Him the ſaid *John Small* with a Pair of Coach-Horſes for a Quarter of a Year for 22 *l.* 10 *s.* And the Pauper's Father contracted with the ſaid *John Small*, for *a Stable belonging to the ſaid John Small*; and was to *pay* 2 *l.* 10 *s. per* Quarter for it: And the ſaid *John Small* reſerved a ſeparate Stable, for his own Uſe.

That this Contract took Place at that Time; and was obſerved, performed, and PAID *quarterly*, for two Years and upwards, or thereabouts: About which Time, the ſaid *John Small* was going to diſcharge Him at the latter End of the Quarter; But on the Importunity of his Friends, agreed to let him ſerve him further; For which he was to pay Him 20 *l.* a Quarter, only; and to have the like quarterly Allowance for the Uſe of his *Stables* as before. And under and in purſuance of the ſaid Contract, they mutually agreed and acted, 'till the Death of the Pauper's Father; which happened about the latter End of the Year 1769.

That during all this Time, the Pauper's Father rented and lived in a *Tenement* of 6 *l. per Annum*, in the ſaid Pariſh of *Clapham*; and was *never rated nor paid any Rate or Tax* for the ſaid Tenement or the Stable in which he put his Horſes as aforeſaid: But Mr. *Small was rated and paid for the Stable*, as Part of his own rateable Premiſes in *Clapham* aforeſaid. And there never was any other Contract and Dealings by and between Mr. *Small* and the Pauper's Father.

AND it appearing further in Evidence, that the Pauper's Father, in his Lifetime, in Converſation with two Perſons in that Neighbourhood concerning this Matter, told each of them "That he "had agreed with and ſerved Mr. *Small* with a pair of Horſes, "at the Rate of 100 *l. per* Year; and that he paid or allowed Mr. "*Small* for the Uſe of his Stable, to put and keep his Horſes in, "at the Rate of 10 *l. per Annum.*"—

It is ordered by this Court [the Seſſions] on full Conſideration had thereon, that the ſaid Appeal of the ſaid Appellants, be, and the ſame is hereby diſmiſſed; and that the Order or Warrant of the ſaid two Juſtices be, and the ſame is hereby ratified and confirmed.

Mr. *Lade* moved, on *Monday* 4th *February* 1771, to quaſh theſe Orders: For that the Father of the Paupers was legally ſettled at *Clapham*.

On *Monday* the 11th, Mr. *Dunning* ſhewed Cauſe; and argued, that this is *not* an *independent* Contract for renting the Stable; but only a Deduction from the Price of the Jobb-Horſes, upon account of their

their ſtanding in Mr. *Small's* own Stable: No *Rent* would be payable after the Jobb-Contract ſhould be at an End. ST. MARGARET'S *and* CLAPHAM.

Mr. *Lade* ſupported by Mr. *Wallace*, anſwered, that the firſt Contract was "for the Stable, to *pay* 2 *l.* 10 *s. per Quarter:* which was accordingly paid quarterly for two Years and upwards. And upon the ſecond Contract, it was to be, in like Manner, *quarterly*; and in fact ſubſiſted ſeveral Years, 'till *Harris's* Death. Mr. *Lade* ſaid, the Seſſions took it up upon the Foot of its not being rateable.

It was adjourned till this Day: And now,

THE COURT made the Rule abſolute, for quaſhing the Orders. They thought the Contract, though aukwardly penned, was, in its Form, a ſeparate Contract for the Stable: and they founded their Judgment (as Mr. JUSTICE WILLES declared) upon the Particularity of the Contract; Obſerving, that though the Man was not rated for the Stable, yet he uſed ſix Pounds a Year beſides.

BOTH ORDERS QUASHED.

Raſtell

Eaſter Term

11 Geo. 3. 1771.

No. 213.

Rex *v.* Inhabitants of Honiton.

Tueſday 7th *May* 1771.

Adjudication, that the Paupers *have* become chargeable, imports that they *are* ſo.

MR. Serjeant *Burland* had moved, on *Saturday* the 10th of *February* 1771, to quaſh an Order of Seſſions made for quaſhing an Original Order of two Juſtices, made for removing *Charles Deane* and *Ann* his Wife, *Joſeph Deane* his Son (aged 15 Years,) *Mary Deane* (aged ten Years,) and *Amelia Deane* (aged 5 Years) their Daughters, from the Pariſh of *Honiton* in the County of *Devon*, to the Pariſh of *Awliſcombe* in the ſaid County.

His Objection was, to the REASON given by the Seſſions for quaſhing the Original Order of the two Juſtices: Which was thus ſtated upon the Order of Seſſions—

" Upon an Appeal made to this Court by the Churchwardens and " Overſeers of the Poor of the Pariſh of *Awliſcombe* in this County, " from and againſt an Order lately made by *Thomas Putt* Eſq; and " *Richard Lewis* Clerk, two of his Majeſty's Juſtices of the Peace " of this County, whereby *Charles Deane* and *Ann* his Wife, *Jo-* " *ſeph Deane* his Son (aged 15 Years,) *Mary* (aged 10 Years,) and " *Amelia Deane* (aged 5 Years,) their Daughters, were removed " from the Pariſh of *Honiton* in this County, to the ſaid Pariſh of " *Awliſcombe*, as the Place of their laſt legal Settlement; THIS " COURT, upon hearing all Parties concerned and their Counſel, " DOTH QUASH the ſaid ORDER, *for that* the Adjudication of the " ſaid Juſtices in the ſaid Order, is *only*, That the Paupers HAVE " become

" become chargeable. And the ſame is hereby quaſhed accord-
" ingly."

Honiton and Awliscombe.

The Court granted the Serjeant a

Rule to ſhew Cauſe why the Order of Seſſions ſhould not be quaſhed, for the Inſufficiency thereof.

Mr. *Mansfield* and Mr. *Hawtree* now ſhewed Cauſe. They ſaid, the Seſſions were obliged to *quaſh* this Order of the two Juſtices: It was not in their Power to amend it. They can only amend Matters of *Form:* But this is a Defect in *Subſtance.* To prove both theſe Aſſertions, they cited the Caſe of *Great Bedwin:* Which may be ſeen at large, *ante,* No. 58. pa. 163, to 166. They alledged, that the two Juſtices had not, in this their Order, intitled themſelves to any Juriſdiction. They have not ſhewn that theſe Paupers were likely to become chargeable to the Pariſh from whence they have removed them: They only declare that they *have* been ſo, in time paſt; but do not adjudge that they *are* ſo, or that they are *likely to become* ſo. But till they are likely to become chargeable, the Juſtices have no Juriſdiction. And it does not follow, that they are likely to be ſo hereafter, becauſe they were formerly ſo. To this Purpoſe, they cited 2 *Salk.* 491. *Suddlecomb* and *Burwaſh,* and 1 *Strange* 77. *Teelby* and *Willerton* Pariſhes.

Serjeant *Burland* and Mr. *Dunning* anſwered the Objection, by putting a different Interpretation upon the Expreſſion uſed by the two Juſtices. They underſtood it in the *preſent* Tenſe; and argued that the Import of theſe Words is much ſtronger than if the two Juſtices had only adjudged " that the Paupers were * *likely to be chargeable* to the Pariſh. For this is an Adjudication, " that they " *actually were* ſo, at the Time when the Order was made for re-
" moving them."

* This is the Expreſſion uſed in 13 & 14 *C.* 2. *c.* 12. § 1.

The whole Court were clear, that the Words, " *have* " *become chargeable*" do here import the *preſent* Tenſe, and ought to be underſtood as an Adjudication of their being ſo at the *Time of making* the Order of Removal.

Mr. *Mansfield* then propoſed, that as the Seſſions had not gone into the Merits, they ſhould now do ſo. But,

Lord Mansfield anſwered Him, that it did not appear there were any Merits; and probably there were none: For, if there had really been any, the Pariſh of *Awliſcombe* would ſcarce have catched at a Straw, as they have done; but would have relied upon their

HONITON *and* AWLISCOMBE.

their Merits. Therefore his Lordſhip directed the Rule to be taken, and it was accordingly taken, that

The ORDER of SESSIONS be QUASHED; and
The ORIGINAL ORDER AFFIRMED.

No. 214.

Rex *v.* Inhabitants of Bray.

Friday 10th *May* 1771.

Abſence by *Conſent*, for a Day or two, at the *Beginning* or before the *End* of the Year, will not defeat a Settlement by *Hiring* and *Service*.

TWO Juſtices removed *John Hunt* and *Elizabeth* his Wife from the Pariſh of *Sherfield* upon *Loddon* in the County of *Southampton*, to *Bray* in the County of *Berks:* And the Seſſions, upon an Appeal, confirmed their Order; ſtating the underwritten Particulars, *viz.*

It appearing upon Oath, That on *Thurſday before Michaelmas* Day 1767, the Pauper *John Hunt* agreed with *John Lee*, of the ſame Pariſh of *Bray*, Farmer, as a Carter, "*to go into his Service* "*on the* MONDAY following, until *Michaelmas* 1768, for ſix "Guineas"—

That at the Time of the Agreement, *John Lee* deſired Him "to "go into his Service *before Monday*"—

That *John Hunt* ſaid "It *would not ſuit Him*, as He was *then in* "*Service:*" and That *John Lee* replied, "*If* He would come into "his Service on the ſaid *Monday Morning*, He would SHIFT *till* "*that Time.*"—

That He *went* into his Service on the MONDAY *accordingly*—

That *Michaelmas Day* was the SATURDAY next *after* the *Thurſday* on which He made the Agreement—

That at the Time of the Agreement, the Pauper was *in the Service of John Lewis of* SOUTH STOCK, under a Contract which *expired on Michaelmas Day* 1767: Which Service He LEFT *on the* NIGHT *of the Michaelmas Day* 1767—

That He CONTINUED in the Service of *John Lee*, till the Day BEFORE *Michaelmas Day* 1768: When *John Hunt deſired* LEAVE of the ſaid *John Lee* his Maſter; "*to go to* SEE HIS RELATIONS, "before He went to another Service"—

That his Maſter *deducted* ONE SHILLING from his Wages, *for that Day*; and paid him the Reſidue—

That He then *went away*, and *returned no more* into the Service of the ſaid *John Lee*—

That

That the ſaid *John Lee*, on the Pauper's going away, told Him, "that *if* He quitted the Service before *Michaelmas Day*, there *might* "*be a Diſpute* about his Settlement;" and *deſired Him* TO COME BACK.—

BRAY *and* SHERFIELD *upon* LODDON.

This Court [the Seſſions] is of Opinion, and doth adjudge, "that "the ſaid recited Order ought to be confirmed:" And the ſame is hereby confirmed accordingly.

A Motion having been made, on behalf of the Pariſh of *Bray*, to quaſh theſe Orders; and a Rule thereupon obtained, to ſhew Cauſe why they ſhould not be quaſhed;

Mr. *Impey* and Mr. *Manſfield* ſhewed Cauſe, on *Tueſday* 27th *November* 1770, Alledging that this was a ſufficient Hiring and Service, to *gain* a Settlement in *Bray*.

Mr. *Dunning* and Mr. *Kerby*, on the Contrary, contended on behalf of *Bray*, that *no* Settlement was gained there; and that the Orders ought to be quaſhed. They inſiſted that there was neither a *Hiring for a Year*, nor a *Service for a Year*. Firſt, The *Hiring* is incomplete: It is manifeſtly for *leſs* than a Year. The Contract did not commence, in point of Obligation, till the *Monday after Michaelmas Day:* That was the Commencement of the Term for which he was to ſerve; which Term was only *till* the next *Michaelmas*. Whereas there ought to be a *Hiring for a complete Year*. This is a Rule the Court will keep ſtrictly and preciſely to: They can't recede from it. The ſmalleſt Diminution prevents a Settlement. It is abſolutely neceſſary, that the *Original Contract* be for a *whole* Year. This is not an Original Contract for a Year, with leave of Abſence for the firſt Day or two: but 'tis a Contract to ſerve for a *leſs Space of Time*, than a Year. Under this Head, they cited the Caſes of *Coombe* and *Weſt-Woodbey*, and that of *Coltſbourn* and *South-Cerney:* The former is reported in 1 Sir *J. S.* 143; the latter, in Seſſions Caſes publiſhed in 1750, Vol. 1. pa. 174, Caſe 156. [and *v. ante*, pa. 158, 160, 434, 440, & 670. in No. 208.] Secondly, The *Service* is alſo imperfect and inſufficient: The Quitting it before the End of the Year diſſolved the Contract, and is fatal to the Settlement. The Maſter plainly underſtood it to be ſo; and deſired Him to come back: but he would not.

Mr. *Impey* and Mr. *Manſfield* argued in Support of both the Hiring and the Service. They ſaid, a Day's Abſence, either at the Beginning or End of the Service, would not prevent a Settlement; eſpecially, if it be for a reaſonable Cauſe, or with Leave. And they

BRAY and SHERFIELD upon LODDON.

cited the *Goodneſton* Caſe, *ante*, No. 85. pa. 251. and that of *Iſlip*, in Sir *J. S.* 423, 424.

LORD MANSFIELD expreſſed Himſelf with much Concern at the Expences which Pariſhes are put to, in the Execution of the preſent Syſtem of the Poor Laws; and ſaid, it was beſt to keep to the Rules that have been laid down and ſettled in relation to them, without nicely entering into the Reaſons upon which they have been founded. One of thoſe Rules is, "that there muſt be a "*Hiring for* a Year." But here the Juſtices have not ſtated the *Fact* of any Hiring at all: They have only ſtated Evidence. The Court cannot draw Concluſions from the Evidence. If He was to draw the Concluſion from this Evidence, He ſaid He ſhould clearly think it a Hiring *for a Year*, with a *Diſpenſation* of the firſt Day. Why, elſe, ſhould the Maſter deſire Him to go into his Service *before Monday*? or ſay, "that he would ſhift till that Time?" It appears, that the Maſter underſtood it to be a Hiring for a Year. And this appears likewiſe from his deſiring the Pauper to come back, leſt his Settlement ſhould be diſputed, if he quitted the Service before *Michaelmas Day*. Neither had his Lordſhip any Doubt about the Leave for the *laſt* Day. The Pauper thought he had his Maſter's Leave. He allowed a Shilling for it: Which is more than * one Day's Wages.

* It is very near three.

Mr. JUSTICE ASTON had no Doubt but that it was *meant* to be a Hiring for a Year: And ſo it appears, from all that the Maſter ſaid. But he concurred with Lord *Mansfield* in thinking the Caſe imperfectly and defectively ſtated. He thought it did not clearly ſtate the Time from whence the Service was to *commence*; And was of opinion, that it ought to go back to the Seſſions, for them to ſtate the *Fact* as to the *Hiring*.

† *V. poſt.* No. 219.

IT WAS accordingly *ſent back* to the Seſſions to be † *re-ſtated*.

To re-ſtate a Caſe, the Seſſions are not neceſſarily obliged to hear *new* Evidence.

WHEN it came before the Seſſions, (which was upon the 15th *January* 1771,) The Majority of the Juſtices then and there preſent determined NOT *to hear any further Evidence*, or to RE-EXAMINE *the Pauper John Hunt*, although he attended to be examined as a Witneſs; and although *three* of the Juſtices then on the Bench were *not preſent at the former Seſſions*, and had *not heard any Evidence* on the ſaid Appeal. Five of the Juſtices preſent were Mr. *St. Andrew St. John*, Sir *Simon Stuart*, Dr. *Durnford*, Mr. *Charles Powlet*, and Mr. *Swanton*: Of whom, Mr. *St. Andrew St. John*, Sir *Simon Stuart*, and Mr. *Charles Powlet*, were *not preſent* at the *former* Seſſions. The Counſel for the Appellants (the Pariſh of *Bray*) contended,

contended, "that the Seſſions ought to hear Evidence, before they "re-ſtated the Caſe." Whereupon, the Queſtion was then put, by the Clerk of the Peace, to the Juſtices then on the Bench, "Whe-"ther they would hear any Evidence:" Which was determined in the *Negative*. Mr. *St. John* and Mr. *Powlet refuſed* to give *their Opinion* as to the Manner of re-ſtating the Caſe; becauſe they had *not heard the Evidence*. Yet, notwithſtanding ſuch their *Diſſent* and the *Refuſal to examine* the Pauper, the Seſſions *did re-ſtate* the Caſe, and did adjudge "that the Order made at the former Seſſions ſhould "be confirmed:" and the ſame was confirmed accordingly. Note, The only Difference between the former State of the Caſe, and this re-ſtated Caſe, was an Addition in the latter, "that the Pauper was "hired *for a Year*."

Mr. *Kerby* hereupon moved, on *Monday* 22d *April* 1771, That the Caſe might be *again* ſent down to the Seſſions, to be a *ſecond Time re-ſtated*; becauſe ſeveral Juſtices who were upon the Bench at this ſecond Seſſions, but were not preſent at the firſt Seſſions, had *never heard the Evidence at all*, and muſt conſequently be incapable of re-ſtating the Caſe.

He cited two Caſes, which he ſaid were like the preſent. One of them was *Rex v. Page*, *Mich.* 1764, and *Hil.* 1765, where the Queſtion was "Whether a Man was Occupier of Tithes, or only "Bailiff:" The Seſſions were ordered to hear further Evidence; and did ſo. The other Caſe was *Rex v.* Inhabitants of *Hitcham*, *Hil.* 33 *G.* 2. where the Seſſions did re-examine the Fact, "Whe-"ther the Pauper was a ſingle or a married Man, when hired."

The Court were not ſatisfied that the Seſſions were obliged to hear Evidence over again; having heard it before. However, they gave Mr. *Kerby* a Rule upon the Proſecutor, to ſhew Cauſe "why the Orders returned with the *Certiorari*, and alſo the laſt "re-ſtated Order ſhould not be ſent back to the Seſſions, for them "to *hear Evidence*, and to *re-ſtate* the Caſe.

Mr. *Impey* and Mr. *Mansfield* now ſhewed Cauſe. They ſaid, the two Caſes cited were not like to the preſent Caſe. In both of them, *it* was *neceſſary* to hear the Evidence over again: In the preſent Caſe, it was *not* neceſſary. The Matter was fully examined into before; and the Seſſions had ſtated the Evidence, without drawing the Concluſion: The Court thought the Seſſions ought to have drawn the Concluſion; and ſent it back to them for that Purpoſe only. They have now done ſo. They have ſtated a Hiring for a Year. And this Court have now received all the Information they

BRAY and SHEFFIELD upon LONDON.

wanted. The Majority of the Juſtices who conſtituted the latter Seſſions were preſent at the former: And the Pauper was then fully examined, and ſtrictly croſs-examined; and the Whole of the Evidence was ſtated: Nothing was wanting but the Concluſion; which it was not the Province of this Court, but of the Seſſions, to draw.

Mr. *Dunning* and Mr. *Kerby* anſwered, that it was ſent back to the Seſſions, in order to have the *Facts* aſcertained, which were before doubtful. The Pauper was preſent at this ſecond Seſſions; and might and ought to have been examined in order to clear up the Doubt: There was alſo another Witneſs, who attended, and might have been examined. It would then have appeared, that the Pauper was only hired from the *Monday after Michaelmas Day*, and conſequently *not* for a Year. This was in the Nature of a new Trial. The three Juſtices who had never heard the Examination, ought to have been permitted to hear it: Otherwiſe, the Opinion of the Majority ought not to bind them. Their Opinions and Reaſons might have altered the Opinion of the others. The Chairman Himſelf was One of thoſe who never heard the Examination: And without hearing it, they could not judge. In the two Caſes cited, the Juſtices re-examined the Matter, and heard further Evidence: And the Court approved of their Conduct.

LORD MANSFIELD—From the Affidavits that have been produced, it muſt be taken "that no other Witneſs was offered for "Examination at the ſecond Seſſions, but the Pauper." I had no Doubt, before, but that it was a Hiring for a Year; and I wonder any Body ſhould doubt it, upon the Facts *then* ſtated. But the firſt Order of Seſſions wanted *Form:* For the Seſſions had only ſtated the Evidence, without drawing the Concluſion. Both Maſter and Servant were clear, that at the End of the Year there was only an Abſence of *One* Day: And at the Beginning of the Year, the Pauper had his Maſter's *Leave* for being abſent the firſt Day. Both Maſter and Servant meant it as a Settlement.

"Whether the Juſtices at the ſecond Seſſions were or were not "obliged to hear *new Evidence*," is a Queſtion that muſt depend upon the *Nature of the Caſe*. In *Page's* Caſe, new Evidence was *neceſſary:* But in the preſent Caſe, it was ſent back only to cure an *Informality*. Here, the Pauper had before given a full Account of the Agreement. Therefore the Juſtices at this ſecond Seſſions did very right, in not examining Him over again.

THE other three JUDGES concurring,

LORD MANSFIELD ſaid,

Let the RULE be DISCHARGED.

It

BRAY and SHERFIELD upon LODDON.

It being now ſettled " that the Order of Seſſions (being thus " cured of its Original Informality) ought to be affirmed;" (though I don't find in the Rule-Book, that it actually was ſo;)

Mr. *Dunning* moved, on behalf of the Pariſh of *Bray*, " that " their *Recognizance* might be *diſcharged:*" For that they had " ſucceeded in their Objection to the Order of Seſſions, which was a bad One *till amended.* And he cited the before-mentioned Caſe of the Inhabitants of * *Hitcham*; where, upon the amended Order's being affirmed, the Recognizance was diſcharged.

* *V. ante*, No. 161. pa, 504.

Mr. *Impey* oppoſed this; and litigated it for ſome Time. But

LORD MANSFIELD declared, in the End, that as the Order of Seſſions had been varied, the Pariſh that had objected to it as it originally ſtood when it was returned up, ought not to be obliged to pay Coſts.

RECOGNIZANCE DISCHARGED.

The two Rules were theſe—

IT IS ORDERED that the Rule made on *Monday* next after three Weeks from *Eaſter*, " that the Proſecutor ſhould ſhew Cauſe why " the Order returned with the *Certiorari*, and alſo the laſt re-ſtated " Order returned hither by virtue of a Rule of this Court, ſhould " not be ſent back to the Seſſions, for the Juſtices there to hear " the Evidence again, and re-ſtate the Caſe," be now diſcharged.

On the Motion of Mr. *Impey*.

IT IS ORDERED that the Recognizance of the Defendants in this Cauſe be diſcharged.

On the Motion of Mr. *Dunning*.

Trinity

Trinity Term

11 Geo. 3. 1771.

No. 215.

Rex v. Inhabitants of Roſs.

Tueſday 11th *June* 1771.

A Settlement cannot be gained, where the Contract is *diſſolved*, by the Servant's running away, before the *End* of the Year.

TWO Juſtices removed *Thomas Cheſt* and *Elizabeth-Ann*, his Wife, from *Whitchurch* in *Herefordſhire* to *Roſs* in the ſame County: And the Seſſions upon an Appeal, confirm their Order; ſtating the following Caſe—

Thomas Cheſt, the Pauper, was *born in Roſs*; and, being unmarried, *hired himſelf for a Year* to *Edmund Miles*; and *ſerved Him, in Langarren*, only three Days. A Difference ariſing between them about the Buſineſs the Pauper was employed in, *Miles* (the Maſter) bid the Pauper go about his Buſineſs. On which the Pauper immediately *ran away, and quitted his Service*; and *hired himſelf to John Whitby for a Year*, at 55 *s.* a-year Wages, and *ſerved Whitby for ſix Months in Whitchurch*. *Miles* then inſiſted on *Whitby's* not keeping the Pauper in his Service. *Whitby* paid the Pauper his Wages to that Time: and the Pauper *quitted that Service*, and went *one or two Voyages up the River Wye*, as *a Labourer to a Bargemaſter*, for a *Fortnight*; Then at *Whitby's* Requeſt and *Miles's Conſent*, RETURNED *into Whitby's Service*, *without* coming to any new Agreement or any Mention of Wages. He continued in *Whitby's* Service in *Whitchurch ſeven Months*, being a Month over the End of the Year for which he was hired, in order to make out his loſt Time; and then received his Wages, his Maſter deducting 7 *s.* 6 *d.* for the Breaking of a Plough.

The Seſſions, being of Opinion "That the Contract for a Year "with *Whitby* was *diſſolved*, by mutual Conſent, at the Expiration "of the ſaid ſix Months" *confirm* the Order, with 10 *s.* Coſts of the

the Appeal, to be paid by the Churchwardens and Overſeers of *Roſs* to thoſe of *Whitchurch*.

Roſs and Whitchurch.

Mr. *Cocks* on *Monday* 13th *May* 1771 (the laſt Day of laſt *Eaſter Term*) moved for, and obtained a Rule to ſhew Cauſe why both theſe Orders ſhould not be quaſhed. He denied that the Pauper's Contract with *Whitby* was *diſſolved*.

Mr. *Kenyon* and Mr. *Poole* now ſhewed Cauſe. They inſiſted "that the Contract with *Whitby was diſſolved*:" and in Proof of it, they cited the Caſe of *Caverſwall*; (which may be ſeen *ante*, *p.* 461. No. 147.) The Relation between them, as Maſter and Servant, was totally at an End. Their coming together again was caſual. It was *not* a "*continuing and abiding* in the ſame Service during the Space "of one whole Year;" which is required by 8 & 9 *W.* 3. *c.* 30. *ſ.* 4. In the Caſe of *Chriſtchurch* (*ante*, *p.* 69. & *p.* 71. No. 201.) *Lord Hardwicke* obſerved that this Act of 8 & 9 *W.* 3. was an explanatory and declaratory Law, with negative Words; and therefore ought not to be extended by Conſtruction: And in that Caſe, the Contract was holden to be determined by the Servant's quitting his Service within the Year; though he went away with his Maſter's Conſent, and received his whole Year's Wages.

Mr. *Cocks* and Mr. *Morton*, on the other Side, argued, that this may be conſidered as a Continuance in the ſame Service during the whole Year. Both Maſter and Servant underſtood it to be ſo: and *Whitchurch* Pariſh has had the Benefit of the Pauper's Labour for the Space of a whole Year; and therefore ought now to maintain Him. The Statute of 8 & 9 *W.* 3. has, as they ſaid, been liberally conſtrued. The Caſe of *Caverſwall* varies eſſentially, they ſaid, from the preſent Caſe. There the firſt Contract was completely diſſolved: But here, the Servant came again *under the old Contract*; and remained a Month over the End of his Year, to make up the loſt Time. They obſerved alſo, that here the Abſence was in the *Middle* of the Year, and was *purged* by the Maſter's receiving Him again: Whereas in that Caſe of *Caverſwall*, it was at the End of the Year. And to this Purpoſe they cited the Caſe of *Eaton* (*ante*, *p.* 47. No. 14.) where an Abſence of three Weeks without his Maſter's Conſent was purged by his Maſter's receiving him again: And it was there holden "that it would be inconvenient to be over-nice "in Services of this Kind." But,

Lord Mansfield pronounced this Caſe to be, in his Opinion, a very clear One. Here is an *abſolute Diſſolution* of the Contract, by both Maſter and Servant, at the End of ſix Months: whereas

Ross and Whitchurch.

whereas the Statute requires a *Continuance* in the ſame Service for a whole Year. The new Service can't be connected with the old Hiring.

Mr. Justice Aston concurred with his Lordſhip, "that "this was an *abſolute Diſſolution* of the Contract; and that the "new Service can not be *connected* with the old Hiring." In this Caſe, the Maſter and the Servant had nothing more to do with each other, after the latter had quitted the Service of the former. It is not like the Caſes of ſmall Abſences and little Excurſions, which have been overlooked and not objected to by the Maſter. Thoſe Caſes proceed upon the Principle of the Contract's being *continued* and *not diſſolved:* Whereas in the preſent Caſe, it was *totally diſſolved.* The Caſe of *Caverſwall* and *Trentham* is very ſtrong to this Purport (*v. ante, p.* 463, 464, 465. No. 147. See alſo No. 87. *p.* 256 to 259.)

The Court diſcharged the Rule.

Both Orders affirmed.

No. 216. Rex *v.* Inhabitants of Potter Heigham.

Wedneſday 19th *June* 1771.

Abſence by *Conſent* for one Day before the *End* of the Year, will not defeat a Settlement by *Hiring* and *Service.*

Two Juſtices removed *Charles Whenn* and *Rebecca* his Wife from *Ludham* in *Norfolk* to *Potter Heigham* in the ſame County: And their Order was, upon Appeal, confirmed by the Quarter-Seſſions; ſubject to the Opinion of this Court; upon the following Caſe—

It was duly proved to the Court of Seſſions, by the ſaid *Charles Whenn*, the Pauper, on his Oath, That after having gained a Settlement in the Pariſh of *Potter Heigham* by Hiring and Service for a Year, He was *hired for a Year* from *Michaelmas* 1764 to *Michaelmas* 1765, by *Samuel Thaxter* of *South Walſham* in the ſaid County. That ſuch laſt-mentioned Service he the ſaid Pauper entered upon, and continued therein until *the Day before the End* of the Year; when he *deſired his Maſter to diſcharge him*, telling him, "As he "had let himſelf for the next Year to a Perſon in a diſtant Place, "and was removing further from his Friends, "He (the Pauper) "wiſhed to go and ſee them and paſs that Day with them;" and

requeſted to have that Time to Himſelf, to ſpend with them; and to which the *Maſter conſented*; and He was *accordingly diſcharged*; and then received the whole of his Wages, *ſave Sixpence*, which he allowed to his Maſter *for that Day*. Afterwards, the ſaid *Charles Whenn* was hired for a Year to Mrs. *Nuthall* of *Caiſter* in the ſaid County, from *Michaelmas* 1765 to *Michaelmas* 1766, at the Wages of ſix Guineas; and entered upon his Service at *Michaelmas* 1765, and continued there until a few Days before *Lady Day* following. That he had then received One Guinea in part of his Wages; when, *without* his Miſtreſs's Leave, he *abſented Himſelf* from her Service *for about three Weeks*, and then returned and offered to ſerve out the Year with his ſaid Miſtreſs: But Mr. *Nuthall*, who acted as Agent for Mrs. *Nuthall*, as alſo Mrs. *Nuthall* herſelf, *refuſed to take* the ſaid *Charles Whenn* again, unleſs he would make a *new* Agreement, and a *new* Hiring. And accordingly it was agreed between them, "that he ſhould ſerve from that Time to the *Michaelmas* follow-"ing; and ſhould receive three Guineas and an half for that Ser-"vice." He accordingly ſerved her till *Michaelmas*, and received ſuch Wages of three Guineas and an half. It was likewiſe proved, that the ſaid *Charles Whenn* was hired for a Year from *Michaelmas* 1766 to *Michaelmas* 1767, by Mr. *Shreeve* of *Hardley* in the ſaid County of *Norfolk*. That he accordingly entered upon and continued in ſuch laſt-mentioned Service until *within three Days* of the End of the Year; when the Pauper, being unwilling to gain a Settlement in the ſaid Pariſh of *Hardley*, becauſe there was a Houſe of Induſtry in the Hundred in which *Hardley* is ſituate, and which with the Hundred adjoining were incorporated for the better Maintenance of the Poor in theſe two Hundreds. He the ſaid Pauper requeſted his Maſter, the ſaid Mr. *Shreeve*, to *diſcharge* Him the ſaid *Charles Whenn*; which he *accordingly did*, and they *parted by Conſent*, the Pauper abating one Shilling of his Wages for the three Days.

This Court [the Seſſions] upon due Conſideration had of the Premiſſes, adjudged "that the ſaid *Charles Whenn did gain* a legal "Settlement in the Pariſh of *Potter Heigham* aforeſaid, for Him-"ſelf and *Rebecca* his Wife; and did *not* gain any *ſubſequent* Set-"tlement, by ſuch Hiring and Service as aforeſaid;" and doth therefore order that the ſaid Order of Removal be, and the ſame is hereby accordingly ratified and confirmed.

Mr *Wallace* now ſhewed Cauſe againſt quaſhing theſe Orders; Mr. *Dunning* having obtained a Rule for that Purpoſe: And the

Potter Heigham and Ludham.

Queſtion between them was "Whether the Pauper *Charles Whenn* "did or did not gain a Settlement in *South Waltham*, by the Ser- "vice to *Samuel Thaxter* here ſtated."

Mr. *Dunning* argued, that it was a *continuing* and *complete* Service for a Year.

Mr. *Wallace* denied this; and argued "that it was totally *at an* "*End*, and the Contract *diſſolved*, before the Year was completed."

Lord Mansfield was not in Court.

The other three Judges (Aston, Willes, and Ashurst,) held it *not* to be a *Diſſolution* of the Contract; but an Abſence by Leave of the Maſter: and they made the Rule abſolute, for quaſhing the Orders.

Both Orders quashed.

See the laſt Caſe, No. 215. pa. 688, to 691. And alſo No. 14. No. 20. No. 78. No. 85. No. 115. No. 147. No. 158. & No. 211.

No. 217.

Rex *v.* Inhabitants of St. George's Hanover Square.

Wedneſday 19th *June* 1771.

A Settlement may be gained by renting Part of a Houſe, of the yearly *Value* of 10*l.*

Mr. *Bearcroft* had moved, on *Thurſday* the 13th of *June* 1771, to quaſh an Order of Seſſions, which vacated an Order of two Juſtices made for the Removal of *John Malcomb* from St. *George's Hanover Square* to St. *James's Weſtminſter*. But this Determination of the Seſſions was made ſubject to the Opinion of this Court, "Whether, upon the following Facts, the ſaid *John Mal-* "*comb* gained a Settlement in the ſaid Pariſh of St. *James*."

The ſaid *John Malcomb*, the Pauper, about twelve Years ago, hired of Mr. *John Reynolds* the *firſt and ſecond Floor unfurniſhed*, of a Houſe of the Value of forty Pounds a-year in the Pariſh of St. *James Weſtminſter*. The Pauper *furniſhed this Part* of the Houſe, and held the ſame *entirely to Himſelf*, and inhabited therein ſeven Years, and paid for the ſame *ten Pounds a-year*, clear of all Deductions, to the Landlord *John Reynolds*, during all that Time. There was *only One Door* and *One Staircaſe*, which were *uſed in common* by the Pauper and the other Perſons who reſided in the Houſe.

Mr.

Mr. *Bearcroft* ſaid, the Seſſions had miſtaken the Law, in ſuppoſing that the Pauper did *not* gain a Settlement in St. *James's*? And he obtained a Rule to ſhew Cauſe why their Order ſhould not be quaſhed. St. George's and St. James's.

Mr. *Lucas* now moved (juſt before the Riſing of the Court, at near ten o'Clock at Night,) upon an Affidavit of Service, to make this Rule abſolute.

THE RULE *for quaſhing the Order of Seſſions was made abſolute*, without Defence.

Vide poſt. No. 248. S. P. ſettled upon Argument.

Hilary Term

12 Geo. 3. 1772.

No. 218. Rex *v.* Inhabitants of Buckland Denham.

Friday 24th *Jan.* 1770.

A *ſpecial* Hiring for five Years, to work *Shearman's Hours*, which are *uncertain*, and be at Liberty at all other Times, will not gain a Settlement.

TWO Juſtices removed *Joſeph Hibbard*, Clothworker, from *Buckland Denham* in *Somerſetſhire*, to *Mells* in the ſame County. The Seſſions, upon Appeal, diſcharge their Order.

The ſpecial Caſe, as appeared to the Court of Seſſions, (ſo the Order expreſsly ſtates,) and as agreed on by *Henry Hobhouſe* Eſq; Counſel for the Reſpondents, (though *not* agreed to by *Thomas Hotchkin* Eſq; Counſel for the Appellants,) is as follows—

The Pauper lived with his Father in *Mells* (where he was legally ſettled) until he was about 17 Years of Age; when his Father hired him to —— *Adams*, a Clothier of *Buckland Denham:* And an Agreement was made, in Writing; and left with the Maſter.

The Maſter being ſerved with a Subpœna "to produce ſuch Writing," and being examined on Oath, ſaid "that he had ſearched "amongſt his Papers for it; but could not find it:" But, being a Payer to the Pariſh-Rates of *Buckland Denham*, he refuſed to give Evidence of the Contents of the ſaid Writing. On which, the Contents thereof were, by the Pauper's Father, proved to be, "that the "ſaid *Adams* ſhould teach the Pauper the Buſineſs of a *Shearman*; "and that the Pauper ſhould *ſerve* the ſaid *Adams* as a *Shearman*, "for five Years from thence next enſuing: for which, he was to "have, for the firſt half Year, the weekly Wages of 3 *s.* and to be "advanced Sixpence weekly Wages every ſucceeding half Year; "and

" and was to find Himſelf in Meat, Drink, Waſhing, and Lodg-
" ing."
" The Pauper was to work *Shearman's Hours* only: Which are
" uncertain."

BUCKLAND DENHAM *and* MELLS.

The Pauper's Father declared, " that though he could not ſay whether it was or was not Part of the *Writing*, yet it was *underſtood*, " that the Pauper ſhould be at his *own Liberty* at *all other* " *Times*."

The Pauper ſerved his Maſter, *as a Shearman*, during the Term aforeſaid, according to the ſaid Agreement; working the ſame Hours as his Maſter's other Shearmen did; and hath not ſince acquired any other Settlement.

The Seſſions diſcharged the Order of the two Juſtices; with Liberty of making a ſpecial Caſe (to be agreed upon by the Counſel on each Side) for the Opinion of this Court.

Mr. *Hobhouſe* moved, upon *Thurſday* 14th *November* 1771, on behalf of the Pariſh of *Buckland Denham*, to quaſh this Order of Seſſions: For that the Pauper had *not* gained a Settlement there, by the Hiring and Service here ſtated.

Mr. *Dunning* now ſhewed Cauſe; and Mr. *Hotchkins* argued on the ſame Side, (*viz.* on behalf of the Pariſh of *Mells*, and in ſupport of the Order of Seſſions.) They diſputed the Regularity of its coming before this Court: And Mr. *Hotchkin* ſaid, that the Juſtices at the Seſſions conſidered it as a general Hiring; and did not mean to make a ſpecial Caſe of it. They have not ſtated theſe Particulars *as Facts*; but only, that ſuch *Evidence* was. Here is no expreſs Exception of any particular Part of Time, when the Pauper was to be at his own Liberty: Nor does it appear with Preciſion, that there was any Part of it, when he could not be required to work. They cited the Caſe of St. *Agnes* (*ante*, No. 209. page 671;) and inſiſted, that the preſent Caſe falls within the Determination of it; and that the Seſſions have rightly determined " that " the Pauper gained a Settlement in *Buckland Denham*."

*V. *Ante*, No. 214. pa. 682. to 688.

Mr. Serjeant *Burland*, *contra*, on behalf of *Buckland Denham*, anſwered that the Seſſions have ſtated it as *a Fact*, " that the Pauper " worked only the ſame Hours as his Maſter's other Shearmen " did:" And the Agreement was, " that he ſhould be at his *own Li-* " *berty* at *all other* Times." The Caſe of St. *Agnes* and *Peranzabulo* was a Hiring *for a Year*, and *no Exception* in the Original Contract, of *Holidays* and *Sundays*. The Reaſon why a Settlement was gained in that Caſe was becauſe there was *no* Exception in the original

Buckland Denham and Mells.

ginal Contract: But here the Exception was in the Original contract. And this is the Point upon which the Diſtinction turns. [*V. ante*, No. 209. pa. 671.]

The Court were of Opinion, "that the Seſſions have made "a *wrong* Determination." The Judges of this Court (of King's Bench) looked upon this ſpecial Caſe returned up to them by the Seſſions, as a State of the *Facts*; and therefore thought themſelves obliged to proceed upon the Facts ſtated.

Lord Mansfield—It is impoſſible to ſay what Evidence the Maſter *might* have given. The Seſſions proceeded upon the Evidence that *was* given: And ſo muſt we take it, as founded upon the Evidence actually given; without ſuppoſing any that might have been given, but was not given. This is *not* a good Hiring; becauſe there is an *Exception in it*, "that the Pauper was to work "Shearman's Hours only, and to be at his *own Liberty* at all *other* "Times." But if the Contract be an *abſolute* Contract for a Year, the not working on *Sundays* or *Holidays*, if it be the Cuſtom of the Country "*not to work* on thoſe Days," ought not to hinder the Gaining of a Settlement; becauſe, otherwiſe, no ſuch Servant could gain a Settlement in thoſe Countries where ſuch a Cuſtom is eſtabliſhed.

Mr. Juſtice Aſton ſpoke to the ſame Effect. He thought this Caſe not to be diſtinguiſhable from the Caſes of *Wrinton* and *Chewſtoke*, (which *vide ante*, No. 98. pa. 280.) and *Macclesfield* and *Sutton*, (which *vide ante*, No. 146. pa. 258.) and he repeated what Mr. Juſtice *Deniſon* and Mr. Juſtice *Foſter* ſaid in the former Caſe, (which may be ſeen *ante* pa. 282.) and particularly "that a "hired Servant is, even on *Sundays*, to be under the Government "and Control of his Maſter." The Diſtinction taken in the Caſe of St. *Agnes* was very nice, He ſaid; but very right. [See it *ante*, pa. 637, at the End of that Caſe.] Where a Perſon is hired, and it is *Part of the Contract*, "that he ſhall be at his own Liberty "for Part of the Time," it is rather a Hiring within the Statute of Queen *Elizabeth*, than within that of King *William*. And in the Caſe now before us, the Wages are *weekly*: Which though it does not ſtrictly make a Difference, yet it ſtrengthens the Caſe. There is no Inconvenience in keeping to the Diſtinction that has been laid down. A great Burthen might, otherwiſe, be brought upon Pariſhes, by Manufacturers hiring great Numbers of Workmen to work

work only at limited Hours, and have the Reſt of their Time at their own Diſpoſal. BUCKLAND DENHAM and MELLI.

Per Cur.

ORDER of SESSIONS QUASHED: ORIGINAL ORDER AFFIRMED.

Rex *v.* Inhabitants of Clifton upon Dunſmore. No. 219.

Wedneſd. 12th *Feb.* 1772.

A *bequeſt* of Money, to put out Children Apprentices, as the Teſtatrix's Brother ſhould think fit, is a *public* Charity, within 8 *Ann. c.* 9. *ſ.* 40.

TWO Juſtices removed *George Hammonds*, *Mary* his Wife, and their Son and Daughter, (ſpecifying their Names and Ages,) from *Lutterworth* in *Leiceſterſhire* to *Clifton* upon *Dunſmore* in *Warwickſhire*: And their Order was confirmed by the Seſſions upon an Appeal; ſubject to the Opinion of this Court, upon the Facts following, *viz.*

It was proved in Evidence, that the Pauper *George Hammonds* was born at *Clifton* upon *Dunſmore*; and, when about thirteen Years of Age, was bound Apprentice *by Indenture* ſtampt with a treble Sixpenny Stamp, dated 25th *April* 1753, to *William Wright* of *Swinford* in the County of *Leiceſter*, for ſeven Years. That the Conſideration-money in the Indenture (being ſeven Pounds) received by the Maſter, was mentioned in the ſaid Indenture to be paid by *John Bailey* of *Clifton* aforeſaid, Gentleman; being *Charity-money* left by *Catharine Bridgeman*, Widow: But the ſaid *Indenture was not ſtamped*, with any *Stamp*, denoting Sixpence in the Pound to have been paid by the Maſter for every Pound of the ſaid ſeven Pounds; nor any *Evidence* given of any *Apprentice-duty being paid* for any Part thereof. That the ſaid Apprentice *ſerved about four Years at* Swinford, *under the ſaid Indenture*. That the ſaid *Catharine Bridgeman*, in her Lifetime, had a conſiderable Eſtate in the Pariſh of *Clifton*; and that the ſaid *John Bailey* was her Steward and Agent over her Affairs there; and was afterwards Steward to her Succeſſor in the Eſtate there. That it appeared only by the Evidence of the Attorney concerned in filling up the ſaid Indenture (and who was a ſubſcribing Witneſs thereto,) that two other poor Children of the Pariſh of *Clifton* were about the ſame Time put out Apprentices, and that he the ſaid Attorney made the Indentures for the Placing them out. That one of the two laſt-mentioned Indentures was produced; and there was a Receipt thereupon indorſed, ſigned by the Maſter, for

L. 10

CLIFTON upon DUNSMORE and LUTTERWORTH.

L. to received as Consideration-money from the said *John Bailey* as Charity-money left by *Catharine Bridgeman*, Widow: But no Sum was mentioned in the Body of that Indenture as the Consideration for taking the Apprentice bound thereby. That the said *John Bailey* gave Order to the said Attorney, for making the said Indentures; and at the respective Times he so gave such Orders, and also at the respective Times he paid the Consideration-monies, declared "that the said Monies were left by Mrs. *Catharine Bridgeman's* "Will, for putting out poor Children of the Parish of *Clifton* Ap"prentices; and that he paid the same by order of her Executors; "and that the whole of the Money so left by her Will was *L.* 70 "or thereabouts; and that what remained after deducting the Mo"nies paid with such three Apprentices (which was about *L.* 27.) "was distributed amongst the Poor Families in the Parish of *Clif*"*ton*." But neither the Will of *Catharine Bridgeman*, nor the Probate, or any other Copy thereof, or any Clause therefrom, being produced upon the Trial of the Appeal; nor any Evidence given or offered touching the said Charity-money, by any Person having seen the said Will or any Copy thereof or of any Part thereof; or whether the said *John Bailey*, who it appeared had left the neighbourhood of *Clifton* several Years past, was living or dead; or that any Application had been made to know whether he was or not, or for the producing him (if living) to give Evidence touching the said Charity; nor any other Evidence given concerning the said seven Pounds (paid with the Pauper *George Hammonds* to the said *William Wright*) being Charity-money, than the said Indenture and that of the Attorney above stated, and of the said *William Wright* declaring that he heard the said *John Bailey* say, at the time the said Indenture was executed, "that the said Sum of *L.* 7 was Charity-money "given by Mrs. *Bridgeman*;" the Court of [of Sessions] considering it incumbent to be shewn on the Part of *Clifton*, "that the said *L.* 7 "*was* SUCH *Charity-money* as was *exempt from paying the said Ap*"*prentice-duty*;" and not apprehending the Evidence above stated concerning the same, sufficient to shew it exempted.

These Orders being removed by *Certiorari*, and objected to, and a Rule made for shewing Cause against quashing them, and Cause shewn; a Rule was made on *Monday* next after three Weeks from *Easter*, on Mr. *Dunning's* Motion, "that they should be sent back "to the Sessions to be re-stated, and to state the Facts particular"ly."

The Sessions return "That the Facts are, in the Judgment of "this Court [the Sessions] *already* stated *as particularly* as the Evi-

" dence given *upon the Hearing* of the Appeal will enable this Court " [the Seſſions] to ſtate them; and that *William Caldecott*, Solicitor " for the Pariſh of *Cliſton*, produced and offered to prove in Evi- " dence, at this Seſſions, an Office-copy of Mrs. *Catharine Bridge-* " *man's* Will to be a true Copy of the Original Will; and that " this Court refuſed to receive the ſame, apprehending this Court " hath not a Right *now* to *receive any further Evidence* reſpecting " the ſaid Appeal, than was given at the Time the ſaid Appeal " was firſt heard."

THE COURT [of King's Bench] being ſtill diſſatisfied with their Return, made a Rule, on *Thurſday* next after 15 Days from St. *Martin* (12 *G.* 3.) " that the Original Order and the Order of " Seſſions made in Confirmation thereof, be ſent back to the Seſ- " ſions; and that the Juſtices there do *hear freſh Evidence*, and " ſtate particularly, whether the Charity in queſtion be a *Public* " or a *Private* Charity."

Whereupon, at the General Quarter-Seſſions holden for the County of *Leiceſter* on *Tueſday* in the Week after the *Epiphany*, being the 14th of *January* 1772, That Court certified, That in obedience to the above-mentioned Rule they proceeded to hear *freſh Evidence* in this Cauſe: Which freſh Evidence was offered on behalf of the Inhabitants of *Cliſton* and was as follows, *viz.*

Mr. *William Caldecott*, Attorney for the ſaid Inhabitants, produced an Office-copy of the Will of *Catharine Bridgeman*, and proved the ſame to be a true Copy of the ſaid Will, having examined it with the Original Will now remaining in the Regiſter's Office in *Doctor's Commons*: By which Copy it appears that the ſaid Will contained the following Clauſes or Bequeſts, amongſt others—" *Item*, " To *Ludgate* Priſon, a hundred Pounds, to take Priſoners out, " for ſmall Debts. *Item*, To *Whitechapel* Priſon, thirty Pounds, " to take out Priſoners for ſmall Debts. *Item*, To the two *Comp-* " *ters*, twenty Pounds to each, to take Priſoners out. *Item*, To " *Cliſton*, fifty Pounds, *to be given as my Brother thinks fit*; ſome " on't to put out Children Apprentices." And it alſo thereby appeared, that the ſaid Legacies or Bequeſts, with ſeveral other " pe- " cuniary Legacies were by the ſaid Will charged on *real* Eſtate in " the following Manner—All thoſe Legacies deviſed, to be paid " out of *Cliſton* Lands." And this Court further certifieth, That from the ſaid freſh Evidence, this Court is of Opinion " that the " Charity in queſtion is a *Public* Charity." And this Court doth

CLIFTON upon DUNSMORE and LUTTERWORTH.

further certify "That the ſaid *William Caldecott* further proved "that the ſaid *L.* 50. given to *Clifton* was not paid until about "eight Years after the ſaid Will was proved: and on that Account "there was *L.* 70 paid inſtead of *L.* 50, as the ſaid Legacy to "*Clifton*."

Mr. *Dunning* now moved, that, as the Seſſions have at length expreſsly returned "that the Charity in queſtion is a *Public* Cha-"rity," Both theſe Orders might be quaſhed: For that, by 8 *Ann. c.* 9. *ſect.* 40. Money given to put out Apprentices, either by Pariſhes or by or out of any Public Charities, is *not* to pay any *Duty*, or to require the Stamping of the Indenture. Conſequently, the Pauper gained a Settlement at *Swinford* by his Service there under this Indenture; though no Duty appeared to have been paid, or any Stamp upon the Indenture to denote it.

Mr. *Wallace*, *contra*, for the Pariſh of *Clifton*, argued that this *was not a public* Charity, but a *private* One; becauſe it was entirely left to the Choice of the Teſtatrix's Brother, "Whether to put "out Children Apprentices with the Money, *or not*." But

THE COURT (excluſive of Lord Mansfield, who was gone,) held it to be a *Public* Charity; and made the Rule abſolute for quaſhing the Orders.

BOTH ORDERS QUASHED.

V. ante, No. 185. pa. 576, 577. the 1ſt Point of that Caſe.

Eaſter

Eaſter Term

12 Geo. 3. 1772.

Rex *v.* Inhabitants of Nutley.

No. 220.

MR. *Kerby* moved, on *Thurſday* 7th *May* 1772, to quaſh an Order of Seſſions, which quaſhed an Order of two Juſtices made for the Removal of *John Merrat* and *Elizabeth* his Wife, and their four Children, (naming them, and ſpecifying their Ages,) from *Nutley* in the County of *Southampton* to *Bentworth* in the ſame County.

Saturday 16th *May* 1772.

EVIDENCE, *by Implication*, of a Settlement by *Hiring* and *Service*.

The Order of Seſſions ſtates—That the Appeal coming on, and being examined into, from the Teſtimony of Witneſſes and other Evidence; and argued and debated by Counſel on both Sides; and it appearing unto this Court, That *ſix Weeks before Michaelmas*, about 34 or 35 Years ago, *One John Page* was hired, in the Preſence of *Thomas Merratt* ſince deceaſed, (Father of *John Merratt* the Pauper, and which ſaid *John Merratt* is the Huſband of *Elizabeth* and Father of *John William Ann* and *Richard* mentioned in the ſaid Order of Removal,) by *Thomas Smith* of the Pariſh of *Bentworth*, to ſerve for a Year the ſaid *Thomas Smith*, as UNDER-Carter *to the ſaid Thomas Merratt*; when it was agreed, "that the ſaid "*John Page* and *Thomas Merratt* ſhould come into the Service of "the ſaid *Thomas Smith* on the *Day after Michaelmas* Day then "next." That the ſaid *Page* and *Thomas Merratt* did *accordingly go into the Service* of the ſaid *Thomas Smith*, on the *Day after Michaelmas* Day; and that the ſaid *John Page* ſerved the ſaid *Thomas Smith during the Year*, as UNDER-Carter *to the ſaid Thomas Merratt*;

NUTLEY and BENTWORTH

ratt; and that *then* the said *Page* and *Thomas Merratt left* the Service of the said *Smith*; and He, *Page*, received his Years Wages. That *John Merratt* the Pauper, never gained any Settlement in his *own* Right. That *Rachel Merratt*, the Widow of the said *Thomas Merratt* deposed, "that her late Husband, the *Michaelmas* Day "in the Morning after the said *Thomas Merratt* left the Service of "the said *Thomas Smith* of the Parish of *Bentworth*, *told Her* He "*had hired Himself* to Farmer *John Smith* in the Parish of *Ilsfield*; "and had likewise *told Her* that He *went into* the Service of the "said *John Smith* in the Parish of *Ilsfield*, at the *Michaelmas*, in "consequence of such Hiring; and that he *continued* in his Service "*till about a Month before the* Michaelmas *following*; at which "Time, to wit, about a Month before the *Michaelmas* Day, the "said *Smith turned Him going*; and that he also *told Her*, that he "was so turned away *because* he should not gain a Settlement in the "Parish of *Ilsfield*; but *did not* tell Her that the said *John did* GIVE "*that or any other Reason* for turning Him away." And the said *Rachel* further deposed, that the said *Thomas Merratt* frequently *told* Her He was *turned away against his Will*. And the said *Rachel* further deposed, "that she was married to the said *Tho-* "*mas Merratt* at *Easter* in the Year in which the said *Thomas* "*Merratt told* Her He was in the Service of the said *John*; and "that She *twice saw* Him, during the said Year, in the Service of "the said *John*; and during that Year, till his being turned away, "*considered* him in the Service of the said *John*." That so much of the said *Rachel Merratt's* Evidence as related to the Declarations of her Husband's Evidence being considered by the Court as mere Hearsy, was *rejected*, as *not* being admissible in Evidence.

THIS COURT [the Sessions] is of Opinion and doth adjudge "that the said recited Order ought to be quashed:" And the same is hereby quashed accordingly.

N. B. The Parish of *Nutley* insisted, at the Sessions, "That *Tho-* "*mas Merratt's* Settlement was in *Bentworth*," upon the Facts given in Evidence by *John Page*. It was agreed, "that *Thomas Smith* "(the Master of *Thomas Merratt* and *John Page*) was then dead."

The Parish of *Bentworth* insisted, at the Sessions, and the Sessions were of Opinion (with them) "that *John Page* had not proved "a HIRING of *Thomas Merratt* for a Year." And moreover, they likewise set up the subsequent Hiring and Service of *Thomas Merratt* to Farmer *John Smith* of *Ilsfield*, as a good legal Settlement gained in *Ilsfield* subsequently to his Service in *Bentworth*: Which rendered it immaterial,

immaterial, they ſaid, whether the Hiring in their Pariſh of *Bentworth* was ſufficiently proved, or not. NUTLEY and BENTWORTH

In anſwer to this ſubſequent Settlement in *Ilsfield*, the Pariſh of *Nutley* inſiſted, "that it was only ſupported by HEARSAY-*Evi*-"*dence*; *viz.* what *Rachel Merratt's* Huſband had *told* Her." And the Seſſions being of Opinion with them, upon *this* Point, rejected the Evidence of *Rachel*.

Mr. *Kerby*, who was of Counſel for the Pariſh of *Nutley*, grounded his Motion for quaſhing this Order of Seſſions, upon the two Poſitions abovementioned to have been inſiſted upon by them at Seſſions; namely, 1ſt That *John Page's* Evidence (*Thomas Merratt* and *Thomas Smith* being both dead) was ſufficient Evidence of *Thomas Merratt's* having been hired *for a Year* in *Bentworth*; or, at leaſt of a * *general* Hiring: And 2dly, That *Rachel Merratt's* *Hearſay*-Evidence was inſufficient to prove a ſubſequent Settlement in *Ilsfield*; For, an Account of what Perſons deceaſed have declared in their Lifetime, ſhall not be received of any *particular Facts*, (though it may, in ſome Caſes, be admitted in proof of general Cuſtoms, or Matters of Common Tradition or Repute;) and *Rachel Merratt's* Evidence tends only to prove *particular Facts*. [*V. Theory of Evidence*, 111, 112. and Mr. *Juſtice* Blackſtone's *Commentaries on the Laws of* England, vol. 3. pa. 368.]

* *V. ante*, No. 107, pa. 300.

Mr. *Impey* and Mr. *Manſfield* now ſhewed Cauſe, on Behalf of the Pariſh of *Bentworth*, why the Order of *Seſſions* ſhould not be quaſhed. They ſaid that the Seſſions were of Opinion "that there was no "Proof of a proper Hiring in *Bentworth*; and conſequently, no Set-"tlement gained in *that* Pariſh." Whereupon the Counſel for the Pariſh of *Nutley* deſired that the Caſe might be ſtated ſpecially, in order to have the Opinion of this Court. After which, the Counſel for *Nutley* ſet up a ſubſequent Settlement which the Pauper had, as they alledged, gained in *Ilsfield*: And they went into Evidence to prove this ſubſequent Settlement in *Ilsfield*. But the Seſſions rejected the *Hearſay*-Evidence of *Rachel Merratt*; holding it to be inadmiſſible. However they ſtated *this* Evidence, as well as the *former* Evidence given to prove Him ſettled in *Bentworth*.

So that it turns upon two Queſtions; 1ſt, "Whether *Thomas* "*Merratt* deceaſed gained a Settlement in *Bentworth*;" 2dly, "Whether the Seſſions did right, in rejecting the Evidence of his "Widow, relating to a ſubſequent Settlement in *Ilsfield*."

They argued, that if the Seſſions are right in their Opinion "that "there

NUTLEY and BENTWORTH

"there was not a ſufficient Proof of a proper Hiring in *Bentworth*," there can be no Doubt but that their Order muſt be confirmed. And if they have done wrong in rejecting *Rachel Merratt's* Hearſay-Evidence relating to the ſubſequent Settlement in *Ilsfield*, their Order ought not to be *quaſhed*: It ought only to be *ſent back* to the Seſſions.

As to the firſt Queſtion—It don't appear upon the Evidence, nor is it ſtated, "that *Thomas Merratt* was ever *actually hired* to *Thomas* "*Smith* of *Bentworth*:" There is not the leaſt Proof of any *Contract* between them. Therefore there is no Proof of any Hiring in *Bentworth*. And ſo was the Opinion of the Seſſions: And their Judgment muſt ſtand, unleſs it appears to be wrong.

As to the ſecond Queſtion—Though the Evidence of *Rachel Merratt* ought to have been admitted, yet the Rejection of it is no Reaſon for *quaſhing* the Order of Seſſions: It can only be a Reaſon for ſending it down again, to be re-ſtated. Undoubtedly, many Hearſay-Evidences have been received; and rightly: The Seſſions ought to examine every Thing to the Bottom; They always receive the Evidence of the Pauper's Family. And if this Evidence of *Rachel Merratt* had been received, it would have proved a ſubſequent Settlement gained in *Ilsfield* under a legal Hiring and Service for a Year: And it would have proved that his Maſter's turning Him away, againſt his Will, before the End of his Year, in order to prevent his gaining a Settlement there, was fraudulent; and, conſequently, could not hinder or prevent Him from gaining it. So that it would, upon the whole of it, have proved a Settlement in *Ilsfield*, ſubſequent to the Service in *Bentworth*. They cited the Caſe of the Inhabitants of *Greenwich* (which may be ſeen *ante*, pa. 343. No. 82.) where in a Caſe very like to the preſent, it was referred to the Juſtices to ſtate the Facts more fully *.

* But *N. B.* That was conſented to by Sir *J. S.*

Mr. *Dunning* and Mr. *Kerby*, *contra*, on behalf of *Nutley*, ſtated the Queſtion thus—1ſt, Whether this *Thomas Merratt* deceaſed was *ever* ſettled in *Bentworth*: 2dly, If he was, then How he *loſt* that Settlement.

1ſt, The Tranſaction was near 40 Years ago. The Evidence to prove a Settlement in *Bentworth* is ſtated; And the Seſſions have drawn a Concluſion from it: But their Concluſion is a *wrong* one. Their Concluſion is, "that he was *not* hired:" It ought to have been "that he *was* hired." And this Court will correct their Miſtakes. *Page* could not be *Under*-Carter to *Thomas Merratt*, unleſs

Thomas

Thomas Merratt was *Head*-Carter: The Offices are reciprocal. Expreſſing the one implies the other. It appears, therefore, that *Thomas Merratt* was once ſettled in *Bentworth*. 2dly, How then has he loſt his Settlement? "He has loſt it," ſay the Counſel for *Bentley*, "by gaining a new one in *Ilsfield*." But He did *not*, in Truth and Reality, gain any Settlement there: And ſo the Seſſions have determined. And they have determined right; though they have indeed given an unwiſe Reaſon for their right Determination. *If* the Hearſay-Evidence had been admitted, inſtead of being rejected, it would have been clear that the Man did not ſerve his Year out, or any Thing near it: And there is no Pretence to ſuppoſe that he was turned away by his Maſter, for the *Reaſon* which this Woman has *fancied*. It is not pretended that the Maſter *gave* any ſuch Reaſon for turning him away: It is all mere Imagination.

LORD MANSFIELD held the Settlement in *Bentworth* to be ſufficiently proved: There is Evidence enough, both of a Hiring for a Year, and of a Service for a Year. Beſides, The Court ſhould lean, he ſaid, *in favour* of Settlements.

Mr. JUSTICE ASTON likewiſe held the Settlement to be in *Bentworth*. He thought the Hiring for a Year in that Pariſh to be ſufficiently proved; and, conſequently, that the Seſſions had done wrong, in determining "that a Hiring for a Year was *not* "proved."

He alſo thought them in the wrong, for rejecting the Evidence of *Rachel Merratt*: For the Widow's Account of her Family ought to have been received.

But he was of Opinion, that *if* it had been received, it would not have amounted to a Proof "that the turning the Man away a "Month before the End of the Year was *fraudulent*." Conſequently, it muſt have appeared, upon the whole Evidence given by this Man's Widow, "that he had *not* gained a ſubſequent Settle-"ment in *Ilsfield*."

THE COURT therefore made Mr. *Kerby's* Rule abſolute, for quaſhing the Seſſions Order, and affirming that of the two Juſtices for the Removal of the Paupers to *Bentworth*.

ORDER of SESSIONS QUASHED: ORIGINAL ORDER AFFIRMED.

Trinity Term

12 Geo. 3. 1772.

No. 221. **Rex *v.* Inhabitants of Charles.**

Saturday 4th *July* 1772.

The Place where an *Apprentice refuses*, for the laſt 40 Days, is the Place of his Settlement, without Regard to the *Service*.

TWO Juſtices removed *John Hodge* from the Pariſh of *Knowſtone* in the County of *Devon* to the Pariſh of *Charles*, in the ſame County: And the Seſſions confirmed their Order; ſtating the following Facts—

The Pauper *John Hodge* was bound by the Pariſh of *Knowſtone* to *John Fiſher*, for an Eſtate which he rented in that Pariſh, of *John Looſemore*; who covenanted with ſaid *Fiſher*, "that if a ſecond Ap-"prentice was bound to him for that Eſtate" (which ſecond Apprentice the ſaid *John Hodge* was,) "He the ſaid *John Looſemore* and his "Repreſentatives would diſcharge the ſaid *John Fiſher* from any Ex-"pence that he might incur thereby." The ſaid *John Hodge* being bound to the ſaid *John Fiſher*, He the ſaid *Fiſher* applied to the Widow and Repreſentative of ſaid *Looſemore*; who took the Pauper, and received the Pariſh-money with Him; and went with the Pauper into the Pariſh of *Roſeaſh*, where She then lived, and where He continued with her about two or three Years; when the ſaid Mrs. *Looſemore* intermarried with *John Slader* of the Pariſh of *Charles*; and there the Apprentice reſided with Her for about three Years; when the Boy became a *Cripple*, by loſing both his Feet: Whereupon, ſaid *Slader* and his Wife, about two Months before the Apprenticeſhip was diſcharged, ſent the Apprentice to ſaid *Fiſher*, his Original Maſter (who knew of his being a Cripple,) and inſiſted on his *receiving* the Pauper; which *Fiſher* refuſed, until She promiſed to pay Him all the Expence he ſhould be at in taking Care of the

Pauper;

Pauper; And then *Fiſher* put the Pauper to live with the *Pauper's Grandmother*, in the ſaid Pariſh of *Knowſtone*, at 18 *d.* *per* Week; where he reſided *ſeven Weeks*; when he was removed, having been firſt diſcharged by the Court of General Quarter Seſſions from his Apprenticeſhip, *after a Reſidence of more than* FORTY DAYS of the ſaid ſeven Weeks; for which, *Fiſher* paid Her accordingly, and alſo two Shillings for dreſſing his Wounds; Of which, he hath ſince received 10*s.* 6*d.* of *Slader*, and been promiſed the Remainder. CHARLES *and* KNOWSTONE.

THIS COURT [the Quarter Seſſions] being of Opinion "that the "Pauper did *not* gain a Settlement by ſuch Reſidence of ſeven "Weeks in the Pariſh of *Knowſtone*," doth therefore confirm the ſaid Order, *&c.*

Mr. *Hawtrey* moved, on *Friday* 15*th May* 1772, to quaſh both theſe Orders: For that the Pauper gained a Settlement in the Pariſh of *Charles*, by his laſt forty Days Reſidence there.

Serjeant *Glynn* and Mr *Heath* now ſhewed Cauſe. Mr. *Heath* argued, that *Fiſher's* Application to Mrs. *Looſemore* "to take the Ap-"prentice," and her taking him, operated as an *Aſſignment* of the Apprentice; And that the firſt Maſter was thereby *diſcharged* of Him. But their main Argument was, that this is not *ſuch* a Reſidence of the Apprentice in *Knowſtone* as could gain Him a *Settlement* there: It was only a caſual, accidental, temporary Reſidence; and like reſiding in an Hoſpital, for Cure. They cited, to this Purpoſe, the Caſe of *Alton* and *Elvetham*, *ante*, pa. 418. No. 134. and reaſoned from what Lord *Manſfield* ſaid in that Caſe; (which ſee, *ante*, pa. 421. to 424.) They inſiſted, that *actual* Service was neceſſary, in order to an Apprentice's gaining a Settlement. And therefore this Apprentice's legal Settlement was in *Charles*, where he *performed the Service* of his Apprenticeſhip during the Space of three Years; and *not* in *Knowſtone*, where he lay ill, as a Cripple, and was totally *incapable* of performing any Service at all. In *this* Caſe, it appears, negatively that he *neither did* nor *could* perform any Service in *Knowſtone*. He was received by *Fiſher as being incapable of ſerving* Him; and was accordingly maintained upon *Charity* only, in *Charles*, without any Regard or Relation to the Contract of Apprenticeſhip, which he was altogether incapable of performing, and was ſoon after diſcharged from. Therefore the Caſe is juſt the ſame as if he had never returned to his Maſter at all.

Mr. *Hawtrey*, *contra*, on behalf of the Pariſh of *Charles*, obſerved, as to the 1ſt Objection, that here was *no Aſſignment*: It was only a

CHARLES *and* KNOWSTONE.

Performance of Mr. *Looſemore's Covenant*, by his Widow and Repreſentative. And as to the 2d Point, The Apprentice gained a Settlement in *Knowſtone* by reſiding there the laſt forty Days. The Act of 3 & 4 *W. & M. c.* 11. § 8. ſays only "that if any Perſon "ſhall be bound an Apprentice by Indenture, and *inhabit* in any "Town or Pariſh:" It ſays Nothing about *Service* or *performing* any thing. Beſides, might not the Maſter *diſpenſe* with the Performance of Service? The Caſes about Caſual Reſidence don't apply to this Caſe. Here, the Maſter was obliged to receive the Apprentice again: And *Knowſtone* was the Pariſh where the Original Binding was.

LORD MANSFIELD being gone,

Mr. JUSTICE ASTON ſtopped Serjeant *Burland*, who was beginning to ſpeak on the ſame Side with Mr. *Hawtrey*; It being a clear Caſe, he ſaid, in favour of the Pariſh of *Charles*.

The Boy was bound to *Fiſher* in *Knowſtone*; And the Original Indenture continued: It was never diſcharged by any thing that is here ſtated to have paſſed between *Fiſher* and Mr. *Looſemore*, the Widow and Repreſentative of *John Looſemore*, who had covenanted to diſcharge *Fiſher* from the Expence that he might incur by having a ſecond Apprentice bound to Him for the Eſtate in *Knowſtone* which he rented of *Looſemore*.

The Boy reſided about three Years in the Pariſh of *Charles*; then became a Cripple; was ſent back to *Fiſher* at *Knowſtone*; received by Him; and put, by Him, to live with his Grandmother in *Knowſtone*; and reſided there above forty Days. The *Performance of actual Service* is not the Thing material: It is the *Reſidence*, the * *Inhabitancy* of an Apprentice, in a Town or Pariſh for forty Days, that gains the Settlement. And this Reſidence here ſtated cannot be deemed a caſual accidental Reſidence; and therefore is not to be compared to the Caſes under that Head. I know, it has been ſaid "that the *Benefit the Pariſh has received* from the Labour of the "Pauper is the Reaſon of gaining a Settlement in it." But that is not the true Reaſon; It is the *Reſidence* or *Inhabitancy* for the laſt forty Days, that gains the Settlement.

* *V.* 3 & 4 *W. & M. c.* 11. *ſect.* 8. and 31 *G.* 2. *c.* 11. *ſect.* 1.

The other two Judges concurred.

BOTH ORDERS QUASHED.

Vide ante, No. 170, 171, 183; S. P. *accord.*

FURTHER

FURTHER CONTINUATION OF THE DECISIONS OF THE COURT of KING's BENCH UPON SETTLEMENT-CASES:

Being an ADDITION of a ſecond FOUR Years;

Which completes a Series of more than Forty-three Years, and brings them up to *Michaelmas Term* 1776, 17 *G.* 3.

Michaelmas Term

13 Geo. 3. 1772.

Rex *v.* Inhabitants of Naveſtock. No. 222.

Tueſday 24th November 1772.

HIRING and SERVICE from *the Day after Michaelmas Day, till Michaelmas*

TWO Juſtices removed *Thomas Fair* and *Martha* his Wife, and *Martha* and *John* their Children under ſeven Years of Age, from *Naveſtock* in *Eſſex* to *Stondon Maſſey* in the ſame County. The Seſſions, upon Appeal, ſet aſide their Order, *as far* as relates to *John*, one of the Children; it plainly appearing to them "that the ſaid *John* was not laſt legally ſettled "in the ſaid Pariſh of *Stondon Maſſey*." And the Seſſions being

Day following, according to the *Cuſtom of the Country*; will gain a Settlement. *Bott*, 387. S. C.

NAVESTOCK and STONDON MASSEY.

alſo of Opinion " that the ſaid *Thomas Fair* and *Martha* his Wife, " and *Martha* one of the Children, were likewiſe not legally ſet- " tled in the ſaid Pariſh of *Stondon Maſſey*," doth alſo ſet aſide the ſaid Order of the ſaid two Juſtices, *as far* as relates to them the ſaid *Thomas* and his Wife and *Martha* their Daughter: And it is ordered by the Seſſions, to be ſet aſide accordingly; but ſubject, nevertheleſs, in reſpect to the Settlement of the ſaid *Thomas Fair* and his Wife and Daughter, to the Opinion of his Majeſty's Court of King's Bench on the following ſpecial Caſe, *viz.*

It appears to this Court, [the Seſſions,] that the Huſband *Thomas Fair*, the Pauper, prior to his ſaid Marriage, at *Ongar* Statute-Fair in this County, did, on the *Day* NEXT AFTER *old Michaelmas-Day viz.* on the *eleventh* Day of *October* in the Year 1733. let himſelf to *Samuel Poſſford* of *Naveſtock* in the ſaid County, to ſerve TILL *the Michaelmas-day* following, old Stile, at the Wages of —— *l.* That the Pauper entered upon the ſaid Service, and *continued* in it until the *old Michaelmas-day* following: Upon which Day, he received his Wages and *quitted* the ſaid Service. It appearing to be according to the *Cuſtom and Uſage of the Country*, to hire Servants at the ſaid *Statute-Fair, viz.* the *Day after* old *Michaelmas-day*, in the *manner* this Pauper was hired, the Opinion of this Court is, " that the Pauper gained a " Settlement in *Naveſtock*, by the Hiring and Service above " ſtated," and doth therefore *quaſh* the Order of the two Juſtices; ſubject to the Opinion of the Court of King's Bench on the Queſtion " Whether the *Hiring*, as above ſtated, is a *ſufficient* HIRING FOR A YEAR, to give the Pauper a Settlement."

On *Tueſday* the 7th of *July* 1772, Mr. *Dodd* moved, on behalf of the Pariſh of *Naveſtock*, to quaſh this Order of Seſſions; for that this was *no Hiring for a Year:* It is a Day ſhort of a Year. The Acts of Parliament poſitively require a * Hiring for a Year, and a Serving for a Year: And the Cuſtom and Uſage of the Country can't control a poſitive Act of Parliament. In proof of which he cited the Caſe of *South Cerney*, (*v. ante*, pa. 158, and p. 670.) where the Pauper was hired on the *Wedneſday* after *Michaelmas*, to ſerve to the *Michaelmas* following; which he did accordingly, and received his Wages: And it was argued that this made a ſufficient Settlement, as the Hiring was according to the Courſe and Cuſtom of the Country, at the uſual Time of hiring Servants for the following Year. But it was ruled by the Court

* V. 3. 4. W. & M. c. 11. §7. and 8, 9 W. 3. c. 30. §4.

Court, "that this is *no* Settlement, upon the Face of it. There "must be a Hiring *for a Year*: And that *can't be dispenſed with.*" And they refuſed even a Rule to ſhew Cauſe. [See alſo a like Caſe, *ante*, pa. 157. No. 55. *Rex* v. *Inhabitants of Newton*. But alſo ſee pa. 669. No. 208. *Rex* v. *Inhabitants of Newſtead*; where a Hiring to ſerve from *Whitſuntide* to *Whitſuntide* was holden ſufficient; it being ſtated to be uſual in that Country, and always deemed a Year's Service, without regard to its being more or leſs than 365 Days. See likewiſe *Rex* v. *Inhabitants of Bray*, *ante*, pa. 682. No. 214.] NAVESTOCK *and* STONDON MASSEY.

Mr. *Dodd* ſaid, this was a Doubt in all the Seſſions throughout *England*: And this Caſe is brought hither, in order to ſettle it.

On *Tueſday* the 24th of *November* 1772, Mr. *Manſfield* and Mr. *Lucas* ſhewed Cauſe. They argued that here appeared to be a complete Hiring for a Year, and Service for a Year. But if it ſhould be admitted that a Day was wanting, according to abſolute rigid Strictneſs of Computation, yet the expreſs ſtating it to be, "*according to the Cuſtom and Uſage of the Country*," made it a ſufficient Hiring for a Year, to give the Pauper a Settlement. And ſo it was determined in the Caſe of *Newſtead* *.

* *Ante*, No. 208.

Mr. *Dodd*, ſupported by Mr. *Wallace*, argued that it was *not* a ſufficient Hiring, to give a Settlement; and cited the *Cumberland* Caſe of *Rex* v. *Inhabitants of Lowther*, *ante*, pa. 674. No. 210. to ſhew that the Cuſtom and Practice of the Country can't ſupply the Want of a Hiring for a Year. The Caſe of *Newſtead* was not, they ſaid, to be objected to them: For the Hiring is there expreſsly ſtated to be "*to ſerve for a Year*;" though (as the Court themſelves there obſerve,) the Words "from the ſaid *Whitſuntide* to "*Whitſuntide* following" are added. So that the Court conſidered that as a Hiring for a complete Year. But this is only from the Day *after Michaelmas-day till the Michaelmas-day* following: Which manifeſtly falls ſhort of a Year.

LORD MANSFIELD—There muſt be a Hiring for a Year. If the Hiring be for leſs than a Year, it will not do; be the Deficiency ever ſo little: Two Days, or one Day ſhort of a Year, are equally an Objection to its being a Hiring for a whole Year.

The Seſſions having left it to this Court to determine "Whe-"ther the Hiring here ſtated is a ſufficient Hiring, to give the "Pauper a Settlement."

Hiring

NAYLSTOCK *and* STONDON MASSEY.

Hiring from a moveable Feaſt to a moveable Feaſt, according to the Cuſtom of the Country, has been determined to be a Hiring *for a Year*. And here they have ſtated the *Cuſtom and Uſage* of the Country, to hire Servants in the Manner this Pauper was hired; namely, at the Statute-Fair, the *Day after* old *Michaelmas*. If this ſhould be taken *not to be* a Hiring for a Year, there can be no Settlement gained in this Country, by a Servant: For, all Servants in this Country are hired as the preſent Pauper was hired. Therefore it ſeems no Stretch, to conſider this as a Hiring from *Michaelmas* to *Michaelmas*. And the Man immediately entered upon his Service, and continued in it till the following *Michaelmas-day*, and received his Year's Wages.

Mr. Juſtice ASTON and Mr. Juſtice WILLES, the only other Judges then in Court, entirely concurred in the ſame Sentiments with his Lordſhip. Whereupon

THE COURT unanimouſly DISCHARGED the RULE, and AFFIRMED the ORDER of SESSIONS.

Vide ante, Doug. 423. *contra*. And the Caſe of *The King againſt the Inhabitants of Syderton*, or *Syderſtone cum Bermer*, (*E.* 17 *G.* 3.) there cited *in notis*, and reported in 3 *Burn.* Ed. 1785. p. 420. *accord.*

No. 223. Rex *v.* Inhabitants of Eaſt Ilſley.

Saturday 28th Nov. 1772.

A Groom may gain a Settlement, by *Hiring* and *Service*, in a Place where his Maſter has no *Houſe* nor *Eſtate*.

TWO Juſtices had removed *James Allen* and his Wife from *Eaſt Ilſley* in *Berkſhire* to *Weybridge* in *Surrey*. Upon an Appeal from their Order, the Seſſions had reverſed it; having firſt ſtated the following Facts.

James Allen, the Pauper, was in *June* 1768 hired, at a Place called *Barrows Brook* in *Glouceſterſhire*, as a *Groom*, for one Year certain, to the Earl of *Portmore* (who had then a Seat at *Weybridge* aforeſaid,) by one *Thomas Bell*, then a Servant to the ſaid Earl, at the Rate of three Pounds and three Shillings and a Livery, for the Year; to look after the ſaid Earl's *Running Horſes*, which then ſtood at the ſaid *Thomas Bell's* at *Barrows Brook* aforeſaid. That he lived, the former Part of that Year, at *Barrows Brook* aforeſaid; and went from thence, with the ſaid Horſes, to the Pariſh of *Marrow* in *Surrey*; where he ſtayed the Remainder of that Year, within about twenty Weeks; and received his Year's Wages. During all that Year, he was an Attendant on the ſaid Earl's Running Horſes; and never once was at *Weybridge* during all that Year. At the Expiration of the ſaid Year, he

was

was again hired, at *Marrow* aforeſaid, as a Groom, for another Year certain, to the ſaid Earl of *Portmore*, by one *Jenkins*, Steward to the ſaid Earl, at the Rate of ſix Pounds and ſix Shillings and a Livery for that Year; ſtill to look after the ſaid Earl's Running Horſes. He ſtayed with the ſaid Horſes, at *Marrow*, for ſome ſhort Time: From whence he went, with the ſaid Horſes, to *Weybridge* aforeſaid; where he ſtayed about three Weeks, and then went from thence to *Eaſt Ilſley* aforeſaid, with the ſaid Horſes; where he remained about *ten Weeks*. He went with the ſaid Horſes to *Ebbiſon* Races in *Surrey*; where he ſtayed about ten Days. He then returned, with the ſaid Horſes, to *Weybridge* aforeſaid; where he remained about three Weeks. He then went from thence to *Marrow* aforeſaid, with the ſaid Horſes; where he ſtayed about *twenty Weeks*; during which, his ſecond Year expired; and he received that Year's Wages, and continued under that laſt Hiring, in the Capacity of a Groom and to attend the ſaid Earl's Running Horſes, for another Year, without making any freſh Contract. He went from *Marrow* to *Eaſt Ilſley* aforeſaid, with the ſaid Horſes; and continued with them there, *at one William Frogley's* in the ſaid Pariſh of *Eaſt Ilſley*, for the Space of *ten Months*; when the ſaid *William Frogley* paid him his Wages, by the ſaid Earl's Orders; And thereupon he was diſcharged from the ſaid Earl's Service. During all the ſaid three Years, he never ſerved the ſaid Earl in any other Capacity but as a *Groom*, to *look after and ride the ſaid Horſes*; and never was once at *Weybridge* during the laſt Year, nor hath ever gained any legal Settlement ſince. It is ſtated, that the Pauper did *not* ſerve the ſaid Earl of *Portmore* at *Weybridge* aforeſaid, for the Space of *forty Days* TOGETHER at any one Time; but *did* ſerve the ſaid Earl at *other* Places, for the Space of *forty Days together* at one Time. The Order of Seſſions alſo ſtated, that it appeared by the Evidence of the ſaid *James Allen*, that *Eaſt Ilſley* is a *Public Place* for exerciſing and training of Running Horſes; and that the Earl of *Portmore* had not any HOUSE in *Eaſt Ilſley* aforeſaid, nor any ESTATE there. Upon hearing Counſel and the Merits, the Seſſions order, that the Original Order be reverſed, and the Appeal allowed; referring, however, (by Conſent of both Sides) their Order of Reverſal, together with the Merits, to the Judgment of this Court.

EAST ILSLEY and WEYBRIDGE

On *Saturday* the 23d of *May* 1772, Mr. *Thornton* moved, on behalf of the Pariſh of *Ilſley*, to quaſh this Order of Seſſions; Pro-

East Ilsley and Weybridge

Propoſing it as a Queſtion, "whether a *Groom* reſiding at a public "Place, where his Maſter had no Houſe nor Eſtate, merely for the "Purpoſe of training Race-horſes, ſhould gain a Settlement at that "*public* Place."

Mr. *Vanſittart* and Mr. *Cox* now ſhewed Cauſe why the Order of Seſſions ſhould not be quaſhed.

They denied this to be a *public* Place. Beſides, if it were ſo, yet it is here uſed for a private Purpoſe, of training Horſes. The laſt forty Days Service was performed here: And there are no Circumſtances to take this Caſe out of the General Rule. They cited the Caſes of the Huntſman who gained a Settlement in *St. Peter's* in *St. Alban's*, where his Maſter had no Settlement; and the Stage-Coach-Driver who gained a Settlement in *Chipping-Wycomb*, where he performed his Service, and where his Maſter never reſided: (Both which Caſes may be ſeen *ante*, pa. 423 and 424.)

However, it was enough for them, they ſaid, to ſhew that the Pauper did *not* gain a Settlement at *Weybridge*. Now, firſt, he never ſerved there forty Days together. Secondly, he ſerved twenty Weeks at *Marrow*; and his ſecond Year then expired. Thirdly, he never was once at *Weybridge* during the laſt Year. So that there was no Settlement at all at *Weybridge*.

Mr. *Wallace* and Mr. *Davenport* attempted to ſupport Mr. *Thornton* in atacking the Order of Seſſions.

But THE COURT were unanimous, that it was a right One: And LORD MANSFIELD obſerved, that it was juſt the Caſe of the Huntſman, mentioned in the Caſe of Sir *Harry Calthorpe's* Servant, *ante*, pa. 423, 424.

THE RULE was DISCHARGED; and THE ORDER of SESSIONS AFFIRMED.

Hilary Term

13 Geo. 3. 1772.

Rex *v.* Inhabitants of Bryngwyn. No. 224.

MR. *Bearcroft* had moved on *Saturday* the 28th of *November* 1772, to quaſh an Order of Seſſions which confirmed an Order of two Juſtices, made for the Removal of *Richard Hobly*, *Jane* his Wife, and their four Children, from *Gladeſty* in *Radnorſhire* to *Bryngwyn* in the ſame County; and had a Rule to ſhew Cauſe.

Monday 8th Feb. 1773.

Mr. *Baldwin*, who was now to have ſhewn Cauſe, acknowledged that it was a good Purchaſe, and that he could not ſupport the Orders.

BOTH ORDERS QUASHED.

N. B. I only mention this Caſe here: that it may be known to have been given up without Argument.

Rex *v.* Inhabitants of Aſhton Keynes. No. 225.

MR. *Morris* had moved, on *Thurſday* the 28th of *January* 1773, to quaſh an Order of Seſſions which quaſhed an Order of two Juſtices, made for the Removal of *William Meſſenger*, Miller, and *Martha* his Wife, and their four Children, from *Aſhton Keynes* in *Wilts* to *South Cerney* in *Glouceſterſhire*.

Tueſday 9th Feb. 1773.

The Caſe ſtated upon the Order of Seſſions was—That in *January* 1739, *Richard Meſſenger*, the Father of the Pauper *William Meſſenger*, together with *Mary* his Wife and *Richard Meſſenger*

Proof by *one* Witneſs, that he was preſent with the *other*, and did ſee the Churchwardens and Overſeers ſeverally ſign and ſeal the Certificate, is ſufficient Evidence thereof, without proving the other's ATTESTATION.

EAST ILSLEY and WEYBRIDGE

Propoſing it as a Queſtion, "whether a *Groom* reſiding at a public "Place, where his Maſter had no Houſe nor Eſtate, merely for the "Purpoſe of training Race-horſes, ſhould gain a Settlement at that "*public* Place."

Mr. *Vanſittart* and Mr. *Cox* now ſhewed Cauſe why the Order of Seſſions ſhould not be quaſhed.

They denied this to be a *public* Place. Beſides, if it were ſo, yet it is here uſed for a private Purpoſe, of training Horſes. The laſt forty Days Service was performed here: And there are no Circumſtances to take this Caſe out of the General Rule. They cited the Caſes of the Huntſman who gained a Settlement in *St. Peter's* in *St. Alban's*, where his Maſter had no Settlement; and the Stage-Coach-Driver who gained a Settlement in *Chipping-Wycomb*, where he performed his Service, and where his Maſter never reſided: (Both which Caſes may be ſeen *ante*, pa. 423 and 424.)

However, it was enough for them, they ſaid, to ſhew that the Pauper did *not* gain a Settlement at *Weybridge*. Now, firſt, he never ſerved there forty Days together. Secondly, he ſerved twenty Weeks at *Marrow*; and his ſecond Year then expired. Thirdly, he never was once at *Weybridge* during the laſt Year. So that there was no Settlement at all at *Weybridge*.

Mr. *Wallace* and Mr. *Davenport* attempted to ſupport Mr. *Thornton* in atacking the Order of Seſſions.

But THE COURT were unanimous, that it was a right One: And LORD MANSFIELD obſerved, that it was juſt the Caſe of the Huntſman, mentioned in the Caſe of Sir *Harry Calthorpe's* Servant, *ante*, pa. 423, 424.

THE RULE was DISCHARGED; and THE ORDER of SESSIONS AFFIRMED.

Hilary Term

13 Geo. 3. 1772.

Rex *v.* Inhabitants of Bryngwyn. No. 224.

MR. *Bearcroft* had moved on *Saturday* the 28th of *November* 1772, to quaſh an Order of Seſſions which confirmed an Order of two Juſtices, made for the Removal of *Richard Hobly*, *Jane* his Wife, and their four Children, from *Gladeſty* in *Radnorſhire* to *Bryngwyn* in the ſame County; and had a Rule to ſhew Cauſe. Monday 8th Feb. 1773.

Mr. *Baldwin*, who was now to have ſhewn Cauſe, acknowledged that it was a good Purchaſe, and that he could not ſupport the Orders.

BOTH ORDERS QUASHED.

N. B. I only mention this Caſe here: that it may be known to have been given up without Argument.

Rex *v.* Inhabitants of Aſhton Keynes. No. 225.

MR. *Morris* had moved, on *Thurſday* the 28th of *January* 1773, to quaſh an Order of Seſſions which quaſhed an Order of two Juſtices, made for the Removal of *William Meſſenger*, Miller, and *Martha* his Wife, and their four Children, from *Aſhton Keynes* in *Wilts* to *South Cerney* in *Glouceſterſhire*. Tueſday 9th Feb. 1773.

The Caſe ſtated upon the Order of Seſſions was—That in *January* 1739, *Richard Meſſenger*, the Father of the Pauper *William Meſſenger*, together with *Mary* his Wife and *Richard Meſſenger* Proof by *one* Witneſs, that he was preſent with the *other*, and did ſee the Churchwardens and Overſeers ſeverally ſign and ſeal the Certificate, is ſufficient Evidence thereof, without proving the other's ATTESTATION.

Ashton Keynes and South Cerney.

his Son, went from the ſaid Pariſh of *South Cerney* to the ſaid Pariſh of *Aſhton Keynes*, and lived there, under the following Inſtrument or Paper-Writing, *as a Certificate*—" *Glouceſterſhire*— " To the Churchwardens and Overſeers of the Poor of the Pariſh " of *Aſhton Keynes* in the County of *Wilts*—We the Churchwar- " dens and Overſeers of the Poor of the Pariſh of *South Cerney* " in the County of *Glouceſter* do hereby own and acknowledge " *Richard Meſſenger* and *Mary Meſſenger* his Wife, their Child " *Richard Meſſenger*, his Son, aged half a Year old, *and all Heirs* " *of her Body begotten by the ſaid Richard Meſſenger*, to be Inha- " bitants legally ſettled in our ſaid Pariſh of *South Cerney* in the " County of *Glouceſter*, and to be Pariſhioners there. In witneſs " whereof, we the ſaid Churchwardens and Overſeers of the " Poor of the Pariſh of *South Cerney* have hereunto reſpectively " ſet our Hands and Seals, the 28th Day of *January* 1739, 40.

" Atteſted by
" *Anthony O'Brown*
" his ⋈ Mark
" *Paul Jenkinſon.*"

" ———— O } Church-
" *William Haſkins* O } wardens.
" *Henry Cook* O }
" *John Harris* O } Overſeers.

" We whoſe Names are hereunto ſubſcribed, Two of his Ma- " jeſty's Juſtices of the Peace for the ſaid County of *Glouceſter*, do " hereby Certify that he the ſaid *P. Jenkinſon* came before Us, this " Day, and made Oath that he was preſent with the other Wit- " neſs above mentioned, and did ſee the ſaid Churchwardens and " Overſeers ſeverally ſign and ſeal the ſaid Certificate; and that " *his* Name is of his own proper Hand-Writing. And we do " allow of the Certificate above written. Given under our Hands, " the 28th Day of *January* 1739.

" *Robert Sandford.*
" *Joſeph Smalle.*"

And it further appearing, that the ſaid *Richard Meſſenger* the Father never gained any Settlement in the ſaid Pariſh of *Aſhton Keynes*; and that the Pauper *William Meſſenger* was *born in the ſaid Pariſh of Aſhton Keynes*, but has never done any Act to gain any legal Settlement;

And it appearing to this Court, [the Seſſions,] by the ſaid Paper-Writing, that the Name or Mark of *Anthony Brown*, one of the *Witneſſes* atteſting the Execution of the ſame, was *not proved* before the Juſtices allowing the ſame, to be of *his own proper Hand-Writing*; This Court [the Seſſions] is therefore of Opinion " that

" that the ſaid Paper-Writing is NOT *a proper Certificate*;" and doth adjudge that the ſaid Order of Removal be quaſhed.

Mr. *Morris's* Objection to this Order of Seſſions was, that the *Certificate* was a *ſufficient* one; and, conſequently, the Pariſh of *South Cerney* were bound by it.

Mr. *Wallace* and Mr. *Wilſon* now ſhewed Cauſe againſt quaſhing the Order of Seſſions. They argued that this Paper-Writing (as they called it) was *not* a proper Certificate, ſuch as was required by the 8 & 9 *W.* 3. *c.* 30. § 1. becauſe the name or mark of *Anthony Brown*, one of the Witneſſes atteſting the Execution of it, was *not proved* before the Juſtices who allowed it, to be of that *Witneſs's own proper Hand-Writing*. They urged, that the Act of Parliament of 3 *G.* 2. *c.* 29. *Sect.* 8. requires, that the Witneſſes who atteſt the execution of the Certificate, or one of them, ſhall make Oath before the Juſtices who allow it, " that " ſuch Witneſs or Witneſſes did ſee the Execution of it; *and* " *that the Names of ſuch* WITNESSES *atteſting the ſaid Certificate* " *are of their own proper Hand-Writing.*" Whereas, in this Caſe, *Paul Jenkinſon* (one of the Witneſſes) only proves that his *own* Name is of his own Hand-Writing: But there is *no Sort of Proof*, either by him or by any one elſe, of the Hand-Writing or Mark of *Anthony Brown*, the *other Witneſs*. Therefore the Seſſions did right, they ſaid, in *diſallowing* this as a proper Certificate. And they cited the Caſe of *Barleycroſt* and *Colewerton* in 1 Sir *John Strange* 402. and *Rex* v. *Inhabitants* of *Wooton St. Lawrence*, *ante*, No. 187.

But THE WHOLE COURT were extremely clear, " that " there was ſufficient Proof of *Anthony Brown's* Atteſtation." *Jenkinſon* ſwears " that he was *preſent with Brown*; and did ſee " the Churchwardens and Overſeers ſeverally ſign and ſeal the " ſaid Certificate." And this is above thirty Years ago. It would be very unreaſonable, that the Pariſh who gave this Certificate ſo long ago, ſhould quibble it off, in this Manner, now.

ORIGINAL ORDER AFFIRMED:
ORDER OF SESSIONS QUASHED.

No. 226. Rex *v.* Inhabitants of St. Margaret's in Lincoln.

Thurſd. 11th Feb. 1773.

A *poor Child* may be bound *Apprentice* to the Inhabitant of *another* Pariſh: And ſhall be ſettled, where ſhe ſerves the *laſt* 40 Days, *under* the Indenture.

ON the laſt Day of laſt Term (*Saturday* next after fifteen Days from the Day of *St. Martin*, 13 G. 3.) a Rule was made, upon the Motion of Mr. *Willes*, to ſhew Cauſe why the original Order of two Juſtices made for the Removal of *Eſther Johnſon*, Single Woman, from the Pariſh of *St. Mary* in *Wigford* in the City of *Lincoln*, to the Pariſh of *St. Margaret*; (Part thereof being in the County of *Lincoln*, and Part in the City of *Lincoln*;) and alſo the Order of Seſſion made in Confirmation thereof; ſhould not be quaſhed, for the Inſufficiency thereof.

The ſpecial Caſe ſtated by the Seſſions, upon Appeal to them by the Pariſh of *St. Margaret*, from the Original Order of Removal, was as follows—

It appears to this Court [the Seſſions] that the Pauper, *Eſther Johnſon* was, by *Indenture* duly executed, and bearing Date the *1ſt.* Day of *May* 1767, being at that Time a *poor Child* of the Pariſh of *St. Martin* in the ſaid City, and then of the Age of *fourteen* Years or thereabouts, BOUND APPRENTICE by the major Part of the then *Churchwardens and Overſeers of the Poor* of the Pariſh of *St. Martin*, with the *Conſent* of *John Horton* and *John Brown*, Gentlemen, two of his Majeſty *Juſtices* of the Peace of and for the ſaid City, (one whereof was of the Quorum,) to *Mark Johnſon* of the Pariſh of *St. Mary Wigford* in the ſaid City of *Lincoln*, deſcribed in the ſaid Indenture to be a *Labourer*; to learn the Art and Myſtery of a HOUSEWIFE, and with her ſaid Maſter to dwell, and him to ſerve, from the Date of the ſaid Indenture, till ſhe ſhould accompliſh the Age of 21 Years, or Day of Marriage.

That the ſaid *Eſther Johnſon*, did go to and reſide with her ſaid Maſter *Mark Johnſon*, in the Pariſh of *St. Mary Wigford* aforeſaid, under the ſaid Indenture, *from the Date* thereof *till the Month of October* 1769; when the ſaid *Mark Johnſon* entered into an *Agreement with John Morley of the Pariſh of St. Peter in Eaſt-Gate* in the ſaid City of *Lincoln*, *Coal-Porter*; to which Agreement the *Pariſh Officers of St. Martin* aforeſaid were *neither Parties nor privy*, for *aſſigning* his ſaid Apprentice to the ſaid *John Morley*: And thereupon, the ſaid *Mark Johnſon* did ſign his Conſent or Agreement

Agreement in Writing upon the Back of the ſaid Indenture of Apprenticeſhip, in the Words and Figures following, *viz.* " I do " hereby conſent, that the within named *Eſther Johnſon* ſhall " ſerve *John Morley* of the Pariſh of *St. Peter* in *Eaſt-Gate* in " the City of *Lincoln*, Coal-Porter, for the *Remainder* of the Term, " and under the Covenants and Agreements contained in the " within written Indenture. Witneſs my Hand, this 12th Day " of *October* 1769. The Mark ⋈ of *Mark Johnſon*. Witneſs, " *Hen. Rutter*." St. Margaret and St. Mary,

That the ſaid Indenture of Apprenticeſhip, immediately after ſuch Conſent or Agreement as aforeſaid, was indorſed thereon, was delivered by the ſaid *Mark Johnſon* to the ſaid *John Morley*; who thereupon received the ſaid *Eſther Johnſon* into his Service in the Pariſh of *St. Peter* aforeſaid, *as his own Apprentice:* Where ſhe continued for the Space of *ſix Months* and upwards; when the ſaid *Morley* agreed with one Mr. *Thomas Maſters*, *Maſter of a Cold Bath*, who had married his Daughter and then lived with his Wife and Family in a Houſe ſituate in the ſaid Pariſh of *St. Margaret*, to LEND the ſaid *Eſther Johnſon to him the ſaid Thomas Maſters*. That *Maſters* accordingly received her into his Houſe in the ſaid Pariſh of St. *Margaret*; where ſhe continued to *abide and ſerve* him for the Space of one Year and an Half, with the *Conſent of the ſaid John Morley:* And that the Maſter, being diſcontented with her Behaviour, *turned her out of Doors*. Upon which, ſhe returned, and *offered herſelf* again to the ſaid *John Morley*, as his Apprentice: But *Morley refuſed to receive her* into his Houſe; and having her Indenture of Apprenticeſhip then in his Poſſeſſion, he *gave it up to her*. Whereupon, being *deſtitute of all other Support*, ſhe went to her *Father*, who was a very poor Man and at that Time lived in a ſmall Houſe, by himſelf, in the ſaid Pariſh of *St. Mary* in the ſaid City of *Lincoln*.

That her ſaid Father received her into his Houſe; but being unable to maintain her, applied ſeveral Times to the Pariſh-Officers of *St. Mary*, to get her removed to her proper Place of Settlement; and at length, after ſhe had been with her ſaid Father about ſix Months in the ſaid Pariſh of *St. Mary*; and before the Term mentioned in her Indenture of Apprenticeſhip was expired, *viz.* when ſhe was about nineteen Years old, the Churchwardens and Overſeers of the Poor of the ſaid Pariſh of *St. Mary* carried her before two Juſtices of the ſaid City of *Lincoln:* Who made the Order above ſtated, for removing her to the ſaid Pariſh of

St. Margaret and St. Mary.

St. Margaret, as to the Place of her laſt legal Settlement; her *firſt Maſter*, the ſaid *Mark Johnſon*, (who at the Time of ſuch Removal lived with his Family in another Houſe in the ſaid Pariſh of *St. Mary*,) as alſo the ſaid *John Morley*, having each of them *refuſed to receive her* into his Service.

That the Place of the laſt legal Settlement of the ſaid *Eſther Johnſon* is in the ſaid Pariſh of *St. Margaret*, by Reaſon of her having *ſerved the ſaid Mr. Maſters*, with the *Conſent of the ſaid John Morley*, in the ſaid Pariſh, for the Space of *one Year and ſix Months*: And that the ſaid two Juſtices, in ſending her thither, have acted agreeable to Law.

Therefore the Seſſions *confirm* the original Order.

Mr. *Willes* took ſeveral Exceptions to theſe Orders: The two principal of which, (and the only ones which the Court entered into,) were, 1ſt. That this Binding of the Poor Child by the Pariſh-Officers was to an Inhabitant of *another* Pariſh; which, he ſaid, they could not do: They could only bind out a Pariſh-Child to an Inhabitant of their *own* Pariſh. 2d Exception, The Perſon to whom ſhe was bound, in order to learn Houſewifry, was only a *Day-Labourer*; who aſſigned her, without the Privity of the Pariſh-Officers, to a Coal-Porter; and he lent her to a Quack-Doctor: Which Mr. *Willes* argued to be fraudulent and void. He cited ſeveral Caſes, and (amongſt the reſt) *Rex* v. *Inhabitants of Auſtrey*, *ante*, No. 142.

Mr. Serjeant *Hill* now ſhewed Cauſe. He argued, that the Child might be bound out to an Inhabitant of *another* Pariſh, by the Pariſh-Officers, at their Diſcretion, as well as to an Inhabitant of their own Pariſh: The Juſtices are the proper Check upon the Conduct of the Pariſh-Officers *. *Fraud* can't be preſumed: And here none is found. But, at furtheſt, the Order can't be more than voidable, not void: And the Pauper has ſerved under it. *Johnſon's* Aſſignment of her to *Morley* at leaſt operated as a *Conſent*: And the Aſſent of the Pariſh-Officers was not neceſſary. Her Reſidence with her Father, in *St. Mary's*, was not under the Indenture, nor with the Conſent of her Maſter. It was ſo far from being under a ſpecial particular Conſent of the Maſter, that it had not even his general Licence "to go where ſhe pleaſed." Her Settlement was clearly in *St. Margaret's*; where ſhe ſerved a Year and an Half with the Conſent of *Morley*. He cited *Rex* v. *Inhabitants of St. Petrox*, ante, No. 84. [See alſo No. 28. and No. 189.]

* V. 43 Eliz. c. 2. § 5. 9.

THE

St. Margaret and St. Mary.

The Court were of Opinion, as to the 1st Point, That the Binding was *not restrained* to Inhabitants of the same Parish; but might be to a Person residing in *another* Parish. The *Practice* was various, in different Places: But it was said, that where they confined themselves to bind only to Inhabitants of the *same* Parish, it was usual for the Parishioner to whom the Child was bound, to *assign* it immediately to the Inhabitant of *another* Parish. So that no Inconvenience would in Reality be avoided, by confining it to Inhabitants of the same Parish. And this Consideration induced Lord Mansfield and Mr. Justice Aston to be satisfied that the original Binding might be to the Inhabitant of another Parish.

As to the rest—Whatever Suspicions there might be of *Fraud*, they were *not to suppose Fraud*, they said, where none was found: And here is no Fraud found, or hinted at. The Sessions expressly state "That the Place of the Pauper's last Settlement is in the Parish of *St. Margaret*, by Reason of her having served the said Mr. *Masters*," with the Consent of *Morley*, in the said Parish, one "Year and six Months." And her legal Settlement certainly was, where she served the last forty Days under the Indenture.

Both Orders affirmed.

Rex *v.* Inhabitants of St. Michael in Bath.

No. 227.

Friday 13th Feb. 1775.

A *Parol* Binding, without an *Indenture*, will not gain a Settlement by Apprenticeship. But under circumstances, an Indenture may be *presumed*.

On *Wednesday* the 27th of *January* 1773, Mr. *Whitchurch* moved to quash an Order of Sessions confirming an Order of two Justices, made for the Removal of *Mary Taylor*, with her Daughter *Susannah*, (a Child aged about two Years,) from the Parish of *St. Paul* in *Bedford* to the Parish of *St. Michael* in the City of *Bath*.

On Appeal to the Sessions, they, upon hearing the Merits, and the Allegations and Proofs on both Sides, confirm the original Order; subject to the Opinion of this Court, on a Case to be specially stated: Which Case is returned as follows—

It appeared to them, upon the Oath of *Mary Taylor*, one of the Paupers, that she was married, about four Years ago, at *Bedford*, to one *Richard Taylor*, then a Corporal in his Majesty's 63d Regiment

St. Michael and St. Paul.

Regiment of Foot. That he ſtaid with her only about three Quarters of a Year, and then left her: And that ſhe has heard her ſaid Huſband declare, "that he was born, about 26 Years ago, "at *Charlton*, near *Malmeſbury* in *Wiltſhire*; and that when he "was 14 Years of Age, he *ſerved an Apprenticeſhip* to one *Morley*, "a Plaiſterer, whoſe chriſtian Name was *Thomas*, (as far as ſhe "can recollect,) who lived in the Pariſh of *St. Michael* in the City "of *Bath*; and ſerved the ſaid *Thomas Morley* about four Years. "That he then ran away, and inliſted for a Soldier; went to "*Ireland*; came from thence to *Bedford*; and married the ſaid "*Mary Taylor*, in *St. Paul's Church*, *Bedford*, as aforeſaid." And that ſhe does not know what is become of her ſaid Huſband; having never ſeen or heard of him ſince.

It further appeared, that the Examination of the ſaid *Richard Taylor* was taken in Writing, ſhortly after his ſaid Marriage, before two of his Majeſty's Juſtices of the Peace for the Borough of *Bedford*, agreeably to the Mutiny-Act: Which Writing was produced and read before this Court [of Seſſions,] and is in the Words following —to wit— "Town of *Bedford*—to wit—The Examination of "*Richard Taylor*, a Corporal in the 63d Regiment of Foot; "reſpecting his laſt legal Place of Settlement. The Examinant "*Richard Taylor* upon his Oath ſaith, He was born in the Pa- "riſh of *Charlton* in the County of *Wilts*. There he reſided "about ſix Years. From thence, was at School at *Marmſbury* "in the ſaid County, about four Years. From thence, returned "home to his Mother's, until he arrived at the Age of 14: From "whom he went *Apprentice* to *James Morley*, an Ornament-Plaiſ- "terer at *St. Michael's* Pariſh in *Bath*; with whom he lived five "Years and half. After which, he inliſted into the 63d Re- "giment; where he now remains. Taken before us, *John* "*Cave*, one of his Majeſty's Juſtices, this 12th Day of *October* "1768; *Thomas Boit*. *R. Taylor*, Corp. 63d Foot."

And it further appeared unto this Court, by the Evidence of *Robert Morley*, that there is not, at preſent, a Perſon of the Name of *James Morley*, a Plaiſterer, in *St. Michael's* Pariſh in the City of *Bath*: But that one *James Morley*, who was a Plaiſterer in the ſaid Pariſh, died there about eight Years ago. That the ſaid *Robert Morley* and the ſaid *James Morley* were firſt Couſins. That the ſaid *Robert* worked as Journeyman, in *Bath*, to the ſaid *James*, for about nineteen Years, on and off, till his Death; but was abſent

ſent from his Work ſometimes for three Quarters of a Year together. That he was perfectly acquainted with the ſaid *James Morley*, and has often heard him ſay "that he *never would take an* "*Apprentice*; becauſe he was a ſingle Man and only a Lodger "himſelf." And the ſaid *Robert* ſays, to the beſt of his Knowledge, that the ſaid *James Morley never had an Apprentice in his Life*; and that *John Morley*, Brother of the ſaid *James*, who is at preſent a Plaiſterer at *Bath*, never had, to the beſt of his Knowledge, an Apprentice in his Life; and has, divers Times, given, in the Hearing of the ſaid *Robert*, for Reaſon, "that being, all "his Life, a ſingle Man and a Lodger, he never would take an "Apprentice." St. Michael and St. Paul.

And there appeared to this Court [the Seſſions] *no Evidence* "that the ſaid *Richard Taylor had been bound an Apprentice*." other than is contained in his aforeſaid Examination and his aforeſaid Declaration given in Evidence to this Court [the Seſſions] by his Wife as aforeſaid: Neither did it appear to this Court, "that the ſaid *Richard Taylor* has gained any Settlement in the "ſaid Pariſh of *St. Michael* in *Bath*, other than as afore-"ſaid."

Mr. *Whitchurch* objected, that nothing is ſtated, to ſupport a Settlement at *St. Michael's* in *Bath*: Here is neither Evidence of the Exiſtence of any *Indenture*; nor Evidence of a *Service under* any Indenture. The *Indenture* is the material Thing: The being bound Apprentice *by Indenture* is the eſſential Point. In Proof whereof he cited the Caſes of *Rex* v. *Inhabitants of Whitechurch Canonicorum*, *ante*, No. 173, and *Rex* v. *Inhabitants of All Saints in Hereford*, *ante*, No. 203.

Mr. *Bearcroft* now ſhewed Cauſe againſt quaſhing theſe Orders.

There appears enough, upon the Caſe ſtated, to ſatisfy the Court that the Settlement of the Paupers is in *St. Michael's* in *Bath*. But if the Facts were not fully ſtated, it would not be a Reaſon for quaſhing the Orders: They are not to be quaſhed, unleſs they are ſhewn to be wrong. *An Apprenticeſhip* is proved: And an Apprenticeſhip muſt, by Law, be by *Indenture*. The Maſter is dead: And the Apprentice, in whoſe Cuſtody one Part of the Indentures muſt have been, is run away. The 5 *Eliz. c.* 4. ſhews that there muſt have been an Indenture: But it is not always and abſolutely neceſſary that the Indenture ſhould be

St. Michael and St. Paul.

produced. *Richard Taylor* himſelf has proved it: The Mutiny-Act makes his Examination Evidence at the Seſſions.

Mr. *Whitchurch* was now ſupported by Mr. *Wallace* and Mr. *Mansfield*.

They inſiſted, that there was no Evidence of a *Binding by Indenture*. The Wife's Evidence, they ſaid, was not admiſſible: However, that does not prove a Binding by Indenture. And the Soldier's Evidence, even if it had been given at the Seſſions, would not have proved it. The Soldier's Examination is only to ſupply the want of his Preſence at the Seſſions: It can't prove more than it would have proved, if it had been given at the Seſſions. It is expreſsly ſtated, "that *no other* Evidence was given "of *Taylor's having been bound* an Apprentice; neither did it "*otherwiſe* appear, that he had gained any Settlement in *St.* "*Michael's*."

But THE COURT thought, they could not draw a Concluſion contrary to the Evidence that had been given; nor could they preſume, after four Years, and after the Maſter was dead, "that there was NO *Indenture*."

Mr. Juſtice ASTON cited a Caſe of the *King* againſt the *Inhabitants* of *St. Helen's* in *Abington*, in *Trinity*-Term 1749; where the Indenture of Apprenticeſhip was not produced in Evidence, nor directly proved to be loſt. It was inquired after; and the Son of the Maſter ſaid "He could not find it:" but there was not very complete and diligent Search made after it, to find it out; and it appeared pretty plainly, "that it had never been "ſtampt." There, the Orders were quaſhed, without any Doubt: For, there was not enough ſtated, to ſhew it to be a Binding within the Act; and they had not taken ſufficient Pains to inquire after the Indenture, and find out whether it was capable of being produced, or not. But in the preſent Caſe, the Court will not preſume "that the Man ſerved five Years and a half "*without* an Indenture."

Mr. Juſtice WILLES and Mr. Juſtice ASHHURST concurred, that the Court were not to *preſume* "that there was NO In-"denture;" eſpecially, after the Death of the Maſter. The former took Notice, however, at the ſame Time, that a *Parol*-Binding will not gain a Settlement: It muſt be a *binding by Indenture*. For which he cited *Rex* v. *Inhabitants of Mawnan*.

H. 22

H. 22 *G.* 2. [See this Case, *ante*, pa. 290. No. 102. and 3 & 4 *W. & M. c.* 11. § 8.]

St. Michael and St. Paul.

By the unanimous Opinion of the whole Court,

THE RULE was DISCHARGED; and BOTH ORDERS AFFIRMED *.

* *Vide ante*, No. 94. 173. 203. *post*. No. 262. S. P. but see the *Statute* 31 *G.* 2. *c.* 11.

Note:—The Case of *St. Helen's* in *Abington*, mentioned by Mr. Justice ASTON, is in pa. 290. No. 104. But as I have not there given the State of the Facts, it may not be an improper Supplement both to that Case and the present one, to insert it here.

It was as follows—

Rex *v.* Inhabitants of St. Helen's in Abington.

PAROL *Evidence* of an *Indenture*, not produced, inadmissible. *Ante*, No. 104. S. C.

TWO JUSTICES removed *Ann Hutt*, Wife of *Joseph Hutt* gone away, and their four Children (specifying their Names and Ages,) from *St. Saviour's Southwark* to *St. Helen's* in *Abington*. Their Order was confirmed by the Sessions, on an Appeal.

The Case stated upon the Sessions-Order was as follows—

That *Joseph Hutt*, the Husband of *Ann*, and Father of the Children, and who has absconded for six Months last past, was born in 1718, in *St. Thomas's* Parish in the Borough of *Southwark*, and lived, from the Age of five to the Age of fifteen Years, with *William Hutt*, Basket-maker, his Grandfather, in the Parish of *St. Helen* in *Abington*, who maintained and provided for him.

Joan Hudson, the Mother of the said *Joseph Hutt* the Father, gave in Evidence, "that the said *Joseph Hutt*, her Son, in 1733, "was *bound Apprentice* to his Grandfather, *by Indenture*, for seven "Years; and that the said *Indenture was delivered* into the *Custo-* "*dy of the said William the Grandfather*, as she had been INFORM- "ED *by the said Joseph Hutt himself*; but that she NEVER SAW "*the Indenture of Apprenticeship*, herself; and KNEW *nothing of* "*it*, but from the INFORMATION of the said *Joseph* her Son. "And 'twas reputed in the Family, that the said *Joseph Hutt* was

St. Helen's and St. Saviour's.

" his Apprentice; and was ſo deſcribed in the Grandfather's " Will."

And it further appeared upon Evidence, that the ſaid *Joſeph Hutt*, the Father, *ſerved* his ſaid Grandfather *five* Years in the Pariſh of *St. Helen* UNDER *the ſaid Indenture*; and that the ſaid *William Hutt* the Grandfather found and provided for the ſaid *Joſeph Hutt*, during the ſaid five Years, in Cloaths and Neceſſaries; and that *William Hutt* the Grandfather died in the Year 1738, leaving *Martha Hutt* his Widow and Executrix, and *John Hutt* his Son; and that *Thomas Buſkin*, by the Order of the Pariſh of *St. Saviour*, in *December* 1748, applied to the ſaid *John Hutt* the Son, who then lived with his Mother, at *Abington* aforeſaid, in the Houſe where the ſaid *William Hutt* the Grandfather died, and where his Goods and Effects were, to know " whether he had " in his Cuſtody any Indenture of Apprenticeſhip between the ſaid " *William* and *Joſeph Hutt*;" and that the ſaid *John Hutt* told the ſaid *Thomas Buſkin* " that he *could not find it*;" and that the ſaid *Thomas Buſkin* did NOT *inquire* " who was the Executor or Re- " preſentative of the ſaid *William Hutt* the Grandfather"; nor did it appear here [at the Seſſions] that he made *any other Application or Search to diſcover and find out* the ſaid *Indenture of Apprenticeſhip*; nor was any Evidence given " that the ſaid Indenture of Ap- " prenticeſhip was *loſt*," ſave as aforeſaid. And the ſaid Indenture of Apprenticeſhip was *not produced* in Evidence.

And it further appeared upon the Evidence of the ſaid *John Hutt*, the Son, who was an Inhabitant and Pariſhioner of *St. Helen* aforeſaid, and rented a Houſe of five Pounds *per* Year, and who was rated and paid to the Land-Tax there, but was not rated to the Poor, and which Land-Tax was allowed him by his Land-lord, " that he was employed by his Father *William Hutt to draw an* " *Indenture of Apprenticeſhip between his ſaid Father and the* " *ſaid Joſeph Hutt*: And that he the ſaid *John Hutt* did, upon a " *common Sheet of Paper* which was NOT STAMPED, copy the " Form of an Indenture of Apprenticeſhip, from an old one, only " altering the Names; and that the ſaid *John Hutt* and one *Green* " were Witneſſes to the Indenture aforeſaid; but that the ſaid In- " denture was NOT *ſtamped*."

And it alſo appeared upon the Evidence of *John Hutt*, " that " the ſaid *Joſeph Hutt* the Father, upon the Death of *William* " *Hutt* in 1738, did *refuſe to ſerve* the ſaid *Martha*, Widow and " Executrix.

" Executrix of the ſaid *William Hutt*, as an Apprentice *on* " *Account* of the ſaid Paper-Writing NOT *being ſtamped.*"

And *no other Evidence* was given of the ſaid *Joſeph Hutt* the Father's *living an Apprentice* to the ſaid *William* the Grandfather: Nor was any other Settlement proved to be gained by the ſaid *Joſeph Hutt* the Father, than as aforeſaid.

ST. HELEN'S *and* ST. SAVIOUR'S.

Now this Court [of Seſſions] being of Opinion, " that the ſaid " *Ann Hutt* and the ſaid four Children are laſt legally ſettled in the " ſaid Pariſh of *St. Helen* in *Abington*", doth therefore order that the Appeal be diſmiſſed, and the Original Order confirmed

Vide ante, No. 51. *contra.*

Rex *v.* Inhabitants of Toſtock. No. 228.

Friday 12th Feb. 1773.

ON *Wedneſday* the 3d of this Month, Mr. *Andrew Pemberton* moved to quaſh an Order of Seſſions which confirmed an Order of two Juſtices made for removing *Edward Parkinſon* otherwiſe *Jerman*, and *Jane* his Wife, from *Iſleham* in *Cambridgeſhire* to *Toſtock* in *Suffolk*.

An Acknowledgment in a CERTIFICATE, as to the *Parties*, is *concluſive* upon the Pariſh granting it. *Bott.* 392. S. C.

The Caſe ſtated upon the Order of Seſſions, was this.

The ſaid *Edward Parkinſon*, otherwiſe *Jerman*, was *born at Toſtock* aforeſaid, of the Body of one *Elizabeth Parkinſon*, *Spinſter*, a legal Inhabitant of the ſaid Pariſh of *Toſtock*. EDWARD JERMAN, an Inhabitant of the Pariſh of *Iſleham*, but then reſiding in *Toſtock*, was the *putative Father* of the ſaid *Edward Parkinſon* otherwiſe *Jerman*. Soon after the Birth of the ſaid *Edward Parkinſon* otherwiſe *Jerman*, the ſaid *Elizabeth Parkinſon*, at the Pariſh of *Toſtock* aforeſaid, was *married to the ſaid Edward Jerman:* And ſome ſhort Time after the ſaid Marriage, the Pariſh-Officers of *Toſtock* deſired the ſaid *Edward Jerman* to get a *Certificate* from the ſaid Pariſh of *Iſleham*. Whereupon, the ſaid *Edward Jerman* applied to the Pariſh-Officers of *Iſleham* aforeſaid, for ſuch CERTIFICATE for himſelf and his ſaid Wife, *and for the ſaid Edward Parkinſon otherwiſe Jerman (the Pauper) his Son*; WITHOUT *informing them* " that the ſaid *Edward Parkinſon* otherwiſe " *Jerman* was *born a Baſtard.*" The ſaid Pariſh-Officers *knew nothing thereof*, but from ſuch Information of the ſaid *Edward Jerman*. By a *Certificate* bearing Date the 15th of *November* 1746, the Pariſh-Officers of *Iſleham did acknowledge*, the ſaid *Edward*

Tostock and Isleham.

ward Jerman and *Elizabeth* his Wife, and *Edward* the Pauper, by the Name and Deſcription of "*Edward Jerman* and *Elizabeth* "his Wife and *Edward* THEIR SON," were Inhabitants of the ſaid Pariſh of *Iſleham*.

Whereupon, the Court [of Seſſions] is of Opinion "That the "ſaid *Edward Parkinſon* otherwiſe *Jerman* did *not* gain any Set-"tlement for himſelf or for the ſaid *Jane* his Wife in the ſaid "Pariſh of *Iſleham* aforeſaid, by reaſon of any of the Facts "ſtated;" and doth therefore *confirm* the Order of the ſaid two Juſtices for the Removal of the ſaid *Edward Parkinſon* otherwiſe *Jerman*, and *Jane* his Wife, from the ſaid Pariſh of *Iſleham* to the ſaid Pariſh of *Toſtock*.

Mr. *Pemberton* argued that the Seſſions were miſtaken in their Opinion: For, the Pariſh of *Iſleham* were *bound by their Certificate*, which expreſsly acknowledged the Pauper *Edward* to be an Inhabitant of their Pariſh. And he cited the Caſe of the *King* againſt the *Inhabitants of Headcorn*, (*Mary Broomhall's* Caſe) *Trin.* 19 *G.* 2. (*ante*, pa. 253. No. 86.) as a ſtrong Proof on his Side.

Mr. *Manſfield* now ſhewed Cauſe againſt quaſhing theſe Orders.

This Baſtard, he ſaid, was *actually ſettled* at *Toſtock*, upon his *Birth*, prior to the Date of the Certificate. He did not *go from Iſleham* thither, under the Certificate. This Caſe is *not within the Intention* of the Certificate-Acts. The Pauper *did not come into Toſtock*, to inhabit there: He was in it, *before*. He never was *in Iſleham*, nor *out of Toſtock*.

Beſides, this Certificate was obtained from *Iſleham* by a Suppreſſion of Truth: The Father of this Baſtard repreſented him to the Officers of *Iſleham*, as his legitimate Son. It is a *Fraud*, upon the Face of the Order.

In the Caſe of *Headcorn*, and in the Caſes which were there cited, the Pariſhes who gave the Certificates were bound to receive the Paupers, becauſe it was their own Fault or Folly, that they were deceived: Whereas, here, the Father told them a Falſehood, and they had no Means of knowing the Truth.

But THE COURT held the Pariſh of *Iſleham* to be bound by their Certificate, which expreſsly acknowledged "*Edward* "*Jerman* and *Elizabeth* his Wife, and *Edward their Son*, to be "Inhabitants

" Inhabitants of their Pariſh." And as to *Fraud*, it was neither *ſtated* to be a Fraud; nor that the Pariſh of *Toſtock* deſired the Father to procure a Certificate for the Baſtard, AS FOR *his legitimate Son:* It is only ſtated " That the Pariſh-Officers of " *Toſtock* deſired the ſaid *Edward Jerman* to get *a Certificate* from " *Iſleham.*"

TOSTOCK *and* ISLEHAM.

Mr. *Mansfield* thereupon deſired that it might go down again, to be re-ſtated.

Mr. *Pemberton* anſwered, That at the Seſſions, the ſtated Caſe was read over to the Juſtices; and that the Word " *Fraud*" was originally inſerted in it, but was there ſtruck out.

PER CUR. unanimouſly,

RULE made ABSOLUTE; and BOTH ORDERS QUASHED.

Eaſter Term

13 Geo. 3. 1773.

No. 229. **Rex *v.* Inhabitants of Richmond.**

Wedneſday 28th April 1773.

ABSENCE, by *Conſent*, for 13 Days before the End of the Year, is not ſufficient to defeat a Settlement by *Hiring* and *Service*.

ON *Saturday* 21ſt *November* 1772. Mr. *Bearcroft* moved to quaſh an Order of Seſſions confirming an Order of two Juſtices made for removing *Ann Springall* the Wife of *William Springall* (gone from her,) with *Thomas* their Child (aged ten Months) from *St. Margaret's Weſtminſter* to *Richmond* in *Surrey*.

The Facts ſtated upon the Order of Seſſions were theſe—

William Springall, being a ſingle Man, was hired by the Year to *Alexander Crawford*, Eſq; of *Richmond*, on the *thirtieth of October* 1769; And on the 4th of *September* 1770, married a Fellow-Servant. The Wife had given a Month's Warning, in *Auguſt* preceding, "to quit the Service;" and was to quit it in *September*, in Conſequence of ſuch Warning; but was deſired by her Maſter, "to ſtay till the *ſeventeenth of October*;" which ſhe did: And then the Maſter ſaid to *Springall* (the Huſband) "that he "ſuppoſed, as his Wife was going away, he (the Huſband) would "like to do ſo too." The Huſband replied, "He would like "it better, *if it was agreeable to his Maſter*." His Maſter ſaid "*He had no Objection*, as he had another Footman coming; and "would pay him his *whole Year's Wages*:" Which he accordingly did, on the ſaid *ſeventeenth*, in full to the *thirtieth*. On which ſaid *ſevententh* of *October*, both the Huſband and Wife *left the Service*: And the new Footman came in the Huſband's Place, on the ſaid

ſaid 17th of *October* at Night, under the above-mentioned Circumſtances. The Seſſions, upon Conſideration of the Premiſſes, confirm the original Order of the two Juſtices. RICHMOND *and* ST. MARGARET'S.

Mr. *Bearcroft's* Objection to theſe Orders was, "that *William* "*Springall* did not gain a Settlement by *ſerving for a Year* in "*Richmond*; becauſe he *left* the Service *thirteen Days* before the "Expiration of his Year." The Act of Parliament of 8 & 9 *W.* 3. *c.* 30. § 4. is expreſs "that no ſuch Perſon ſo hired as "aforeſaid ſhall be adjudged or deemed to have a good Settle-"ment in any ſuch Pariſh or Townſhip, UNLESS ſuch Perſon "ſhall *continue and abide* in the ſame Service during the Space of "*one* WHOLE *Year*."

Mr. *Lucas* now ſhewed Cauſe againſt quaſhing theſe Orders.

This is a fair and honeſt Service for a Year, within the *Spirit* of the Law and of this very Act of Parliament; which was only made to prevent Servants from gaining Settlements by being merely *hired* for a Year, and yet quitting their *Service* whenever they pleaſed. But the Maſter may ſtill diſpenſe with Part of the Service, either at the Beginning, in the Middle, or at the End of the Year: And at the End, of the Year, the Service may be diſpenſed with, even without the Maſter's Conſent, if there be a reaſonable Cauſe for not completely finiſhing it. The Court have been very liberal in Favour of Settlements, where there has been a reaſonable Ground, and no Fraud. The preſent Caſe is a *Leave of Abſence* for a few Days at the End of the Year, voluntarily given by the Maſter; firſt propoſed by the Maſter to the Servant, not applied for by him; and the whole Year's Wages offered by the Maſter, and willingly paid by him.

Mr. *Lucas* cited many Caſes, in Support of his Argument; namely, *Rex* v. *Inhabitants of Iſlip*. [*v. ante*, pa. 48. 71.] *Rex* v. *Inhabitants of Gooaneſtone*. [*v. ante*, No. 85.] *Rex* v. *Inhabitants of Chriſtchurch*. [*v. ante*, pa. 494. No. 158.] *Rex* v. *Inhabitants of Frome, Selwood*. [*v. ante*, pa. 565. No. 181.] *Rex* v. *Inhabitants of Madington*. [*v. ante*, pa. 675. No. 211.] *Rex* v. *Inhabitants of Bray*. [*v. ante*, pa. 682. No. 214.] *Rex* v. *Inhabitants of Potters Heigham*. [*v. ante*, pa. 690. No. 216.]

Mr. *Bearcroft* inſiſted upon the plain expreſs Words of the Act of Parliament: The imagined Spirit of it, he ſaid, was a vague Rule of conſtruing it. Mr. *Lucas's* Caſes, he ſaid, were not directly in Point. As to thoſe where the Abſence was in the *Middle* of the Year, ſuch Abſence is purged by the Maſter's taking

Richmond and St. Margaret's.

the Servant again. And many of his other Cases turned upon particular Circumstances. That of *Islip* was an unreasonable Denial by the Master: And the Contract was not dissolved. [*v. ante*, pa. 71.] In that of *Goodnestone*, the Servant hired a Man to do his Work: And the Contract was not dissolved. [*v. ante*, 252, 253.] In the Case of *Christchurch*, the Servant's Inability arose from Illness: It was not reasonable, that the Visitation of God should prevent her gaining a Settlement. [*v. ante*, pa. 497.] The Case of *Frome Selwood* was determined upon the Fraud: The Servant's Request "to go and visit his Relations" was a reasonable one. [*v. ante*, pa. 565, 566.] In the Case of *Madington*, the Kick of the Horse, like Sickness, was the Visitation of God: And the Servant's going Home "to get it cured" was grounded upon a reasonable Cause. [*v. ante*, pa. 677.] The Case of *Bray* was but a single Day: And that Case and the Case of *Potters Heigham* stand upon their own Circumstances; and the Contract was not dissolved. But here, the *Contract was dissolved:* And the paying the whole Year's Wages can't alter that Fact.

Mr. *Bearcroft* cited three Cases; *Rex* v. *Inhabitants of Preston*, from 1 *Barnardiston* 415. *Seaford* and *Castlechurch*, from 2 *Stra.* 1022. and *Pawlett* and *Burnham*, from *Foley* 206. That of *Seaford* is very shortly reported by Sir *John Strange*: It may be seen at large, in the 1st Volume of this Collection, page 68. No. 20. It was a Removal of the Pauper from *Syford* in *Staffordshire* (not *Seaford*) to *Castlechurch*. The other two Cases, of *Pawlett* and *Burnham*, and *Preston* and *Ampney*, were there cited. [*v. ante*, pa. 69.] and also another, from *Godalming*. In all these Cases, the Services short of a Year were holden *not* to gain a Settlement.

Lord Mansfield—There's no Necessity of an actual Service upon *every Day* of the Year. The Master can always dispense with it: He can give *Leave of Absence*. Nay, if the Servant is absent *without* Leave, in the *middle* Part of his Year, such Absence may be *purged*, as it has been termed, by the Master receiving him again: that is, the *subsequent Consent* of the Master ratifies the Act done, and is given with a *Retrospect*.

I am clearly of Opinion, that the Servant has in the present Case *sufficiently served* his whole Year. The Master voluntarily gave him *Leave of Absence* for the last thirteen Days; and, of his own Accord, paid him the whole Year's Wages. I think, the Justices have determined rightly, upon both the Orders.

Mr.

Mr. Juſtice ASTON concurred in the ſame Opinion, for the ſame Reaſons. And he added, that there is no Difference between the *End* and the *Middle* of a Year; where the Maſter only gives Leave of Abſence, which is not ſtipulated for in the original Contract. Indeed, where the Abſence is *ſtipulated for* in the original Contract, and made *Part of the original Contract*, as an *Exception out of the Service*; the Caſe is then of a different Kind: As in the Caſe of the King againſt the Inhabitants of *Hatfield* (*ante*, pa. 439. No. 141.) where a Hiring for one Year, to wit from *Michaelmas* to *Michaelmas*, "with *Liberty* to let himſelf for the "*Harveſt-Month*, to any *other* Perſon," was determined "*not* to "be a Hiring for a Year." A Part of the Year was there *excepted out of* the original Contract: It was therefore only a Hiring for the *other eleven Months*. If the Servant goes away in the Middle of the Year, and returns again, and the Maſter receives him again; the Maſter's taking him again *purges* (as it is called) the Abſence, though the Servant had not his previous Leave for it; and ſhews the Maſter's *Conſent* to it, though given ſubſequently. Here, the *whole Year's Wages* were voluntarily paid by the Maſter, quite up to the End of the Year: Which confirms the Maſter's Acquieſcence and Approbation.

RICHMOND *and* ST. MARGARET'S.

Mr. Juſtice WILLES was not in Court.

Mr. Juſtice ASHHURST concurred in Opinion with Lord MANSFIELD and Mr. Juſtice ASTON; and particularly repeated "that the Maſter's offering and paying the whole Year's Wages, "in the Manner ſtated upon the Order of Seſſions, was a Proof of "his Conſent."

BOTH ORDERS AFFIRMED.

Vide ante, pa. 463, 464. No. 147. *Rex* v. *Inhabitants of Caverſwall*; and pa. 479. to 481. No. 152. *Rex* v. *Inhabitants of Nether Heyford*; in both which Caſes, this Point is well diſcuſſed and ſettled.

No. 230. Rex *v.* Inhabitants of Donington.

Friday 30th April 1773.

Orders quaſhed *without Defence.*

ON *Friday* 12th *February* 1773, Mr. Serjeant *Hill* moved to quaſh an Order of two Juſtices made for removing *Thomas Saunderſon* and *Hannah* his Wife, from *Wyberton* in the Parts of *Holland* in the County of *Lincoln*, to *Donington* in the ſame County; and alſo the Order of Seſſions confirming it.

The Caſe ſtated upon the Seſſions-Order was as follows.

That the ſaid *Thomas Saunderſon* was legally ſettled in *Donington*, by Service, prior to the Year 1754. He then hired a Houſe and three Acres and two Roods of Land, at the yearly Rent of *nine* Pounds; which he occupied and paid Rent for, ſeveral Years, from *Lady-Day* to *Lady-Day*. In the Beginning of *September* 1756, he the ſaid *Thomas Saunderſon married Jane* the Widow of *Daniel Wheldale* of the Pariſh of *Wyberton* aforeſaid, who reſided in a Cottage in the ſaid Pariſh of *Wyberton*, *purchaſed* by the ſaid *Daniel Wheldale* for *five* Pounds, and which ſaid Cottage MIGHT *be* of the Value of *one Pound ten Shillings per Annum:* And about a Fortnight after his ſaid Marriage, he the ſaid Pauper *Thomas Saunderſon went and reſided with his Wife in the ſaid Cottage in Wyberton* aforeſaid; and *kept the Key of the Houſe in Donington*, till *Lady-Day* following. But it *not appearing* to the ſaid Court [of Seſſions] that the ſaid *Thomas Saunderſon ever had Credit for ten Pounds per Annum*; as at the Time he left the Pariſh of *Donington*, *viz.* in the Month of *September*, *all his Effects were ſold by his Landlord in Donington*; and it appearing, by an Acquittance produced in Court, " that he at the ſame Time *ſatisfied his Landlord* " for the *Rent that was to become due at Lady-Day following*;" [which *Receipt* was the *only Proof* of his *keeping Poſſeſſion of any Part of the Premiſſes in Donington till Lady-Day following*;] as he *never reſided* in the ſaid Pariſh of *Donington after* he firſt left it in *September* as aforeſaid, *nor ever kept any Stock or Effects* on the Premiſſes whatever, as the Land belonging to the ſaid Houſe was half-year Land, and common to the Inhabitants of *Donington* foreſaid from *Michaelmas* to *Lady-Day*, except about two Roods which the Landlord took Poſſeſſion of at *Michaelmas*, and abated ten Shillings in the Rent for the ſame;

And it *not* appearing to the ſaid Court [of Seſſions] that his ſaid *Wife Jane* (Relict of the ſaid *Daniel Wheldale*) had *ever adminiſtered* to her ſaid Huſband *Daniel Wheldale*, or had *any Right* to the ſaid Premiſſes in *Wyberton*; *not* having been *admitted Tenant*, *nor ever paid any Rent* for the ſame;

The

Doninoton and Wyberton.

The Order of Seſſions, (after ſtating that the above Facts appeared to them,) concludes thus—"It is *not* thought that the "ſaid *Thomas Saunderſon* the Pauper, can gain any Benefit by the "*wrongful Poſſeſſion of the ſaid Cottage* in *Wyberton*; he appearing "to be only a *caſual Occupant* therein."

Mr. Serjeant *Hill* obtained a Rule to ſhew Cauſe why both theſe Orders ſhould not be quaſhed.

Which Rule was now made abſolute, upon his Motion on an Affidavit of Service, and *without Defence*.

N. B. The only Reaſon of my mentioning this Caſe is, that it may be *known* that it paſſed *ſub ſilentio*.

Rex *v.* Inhabitants of Burgh in the Marſh. No. 231.

Orders *given up* as indefenſible.

FOR the *ſame Reaſon*, it may not be amiſs to notify, that theſe Orders were *given up* as indefenſible, after an unſucceſsful Attempt at having the Seſſions-Order ſent back to be re-ſtated.

The Seſſions had confirmed an Order of two Juſtices made for removing *Frances Boyington* and her four Sons from *Reaveſby* in the Parts of *Lindſey* in *Lincolnſhire* to *Burgh* in the *Marſh* in the ſame Parts. Mr. *Baldwin* had moved to quaſh both Orders; and had a Rule to ſhew Cauſe. Mr. Serjeant *Hill* had obtained a Rule to ſhew Cauſe why the Order of Seſſions ſhould not be ſent back to be re-ſtated; upon a Suggeſtion "that the State then returned "up was contrary to the Facts." The Serjeant's Rule was diſcharged by Mr. *Manſfield*, on the laſt Day of laſt Term. Whereupon, the Orders were given up, as not being defenſible on the Caſe ſtated upon the Return to the *Certiorari*.

Trinity

Trinity Term

13 Geo. 3. 1773.

No. 232.

Rex *v.* Inhabitants of Over.

Monday 14th June 1773.

Officiating as *Curate*, under a *Sequeſtration*, will not gain a Settlement.

ON the laſt Day of laſt Term, Mr. *Thomas Cowper*, *junior* moved to quaſh an Order of Seſſions which confirmed an Order of two Juſtices, made for removing the reverend *John Langhorn* from *Helſington* in the County of *Weſtmoreland* to *Over* in the County of *Cheſter*.

The Seſſions ſtated a ſpecial Caſe: And the following was the State of the Facts, upon the Order of Seſſions—

That on the firſt Day of *October* 1766, the Vicarage of the Pariſh of *Over* aforeſaid was *ſequeſtered* for three Years, OR *till the Biſhop ſhould releaſe the ſame.*

That on the 12th Day of *October* aforeſaid, the Pauper was ordained *Deacon*, by the Biſhop of *Cheſter*, in order to ſupply the Cure of *Over* during the Sequeſtration.

That from the 15th Day of *October* aforeſaid to the 15th Day of *June* 1768, he performed divine Service *as Curate*, and *reſided in* the Pariſh of *Acton*, by Exchange with Mr. *Meyrick* who was the Curate of *Acton* aforeſaid, and who during that Time performed divine Service at *Over*, and paid the Pauper five Pounds a Year, for doing his Duty at *Acton*, in Addition to his Salary of 35 *l.* a Year, which was paid him by the Churchwardens who were the *Sequeſtrators* of *Over*, from the ſaid 15th Day of *October* 1776, to the 1ſt Day of *October* 1769, *when the Sequeſtration ended.*

That

That from the ſaid 15th of *June* 1768, to the ſaid firſt Day of *October* 1769, the Pauper performed divine Service and did the Duty *as Curate* at *Over*, and *reſided there*. OVER *and* HELSINGTON.

But it did *not* appear, that the Pauper *had any* LICENCE to the Curacy of *Acton* aforeſaid.

The Court [of Seſſions] being of Opinion "that the ſaid *John* "*Langhorn gained* a Settlement at the Pariſh of *Over* aforeſaid "in the County of *Cheſter* aforeſaid," do order that the ſaid Warrant of Removal be *confirmed* and made abſolute: And the ſame is hereby confirmed and made abſolute accordingly; ſubject nevertheleſs to the Opinion of the Court of King's Bench, on the aforeſaid State of the Caſe.

The only Queſtion, he ſaid, was "Whether *ſerving a Cure* in a "Pariſh, *as* SEQUESTRATOR, gains a Settlement:" Which the Juſtices had determined in the Affirmative; and he *denied*.

Mr. *Chambre* now ſhewed Cauſe. He argued, 1ſt, That this Curate or Sequeſtrator, was irremoveable, and not within the Intention of 13 & 14 *C.* 2. *c.* 12. He did not come as a *Wanderer*: He rather came to ſettle on *his own*. They could not have removed him within the firſt forty Days. And a Perſon not removeable within forty Days, gains a Settlement by reſiding forty Days. Beſides, 2dly, This Office of Curate or Sequeſtrator "for "*three Years*, or till the Biſhop ſhould releaſe the Vicarage from "the Sequeſtration," is a *public annual Office or Charge* in the Pariſh, within 3 & 4 *W.* & *M. c.* 11. § 6. and it was executed on his *own* Account. It was conferred upon him, under his own Qualification of a Deacon; and quite independent of the Vicar of *Over*. A Deacon is for Life: And it is called *an Office*, in the Canons. And its being conditional, *if* the Biſhop ſhould releaſe the Sequeſtration, is no Objection: A *conditional Hiring* will gain a Settlement.

He cited *Linwood* 310 and what was ſaid by Lord *Hardwicke* in the Caſe of *Sundriſh*, (*ante*, Vol. 1. pa. 9.)

Mr. *Cowper*, *contra*, argued, 1ſt, That 13 & 14 *C.* 2. *c.* 12. was laid entirely out of the Caſe, by ſeveral ſubſequent Statutes: And he could not gain a Settlement under that Act. 2dly, This cannot be conſidered as executing an *annual* Office or Charge in the Pariſh, on his *own* Account. It could not be annual; becauſe the Sequeſtration would be at an End, the very Moment the Debt had been paid. The Curate alſo might have diſſolved the Contract, whenever he pleaſed. He had no Freehold in his Office, as a Pariſh

OVER *and* HELSINGTON.

a Pariſh Clerk has: Who is, upon that Foot indeed, holden to be irremoveable, and to gain a Settlement. And as to his being a Deacon; that is a *Character*, not an Office.

LORD MANSFIELD—There is no Colour for conſidering this as an *annual* Office: It is *no Office* at all.

Mr. Juſtice ASTON—You can't call it an *annual* Office, when the Sequeſtration may be determined at *any* Time. It is not the annual Office of a *Conſtable*, or a *Tithingman*: They are appointed yearly, and to ſerve for the Year. That of *Pariſh-Clerk* is a *Freehold*: And it is upon *that* Foot, that a Pariſh-Clerk gains a Settlement.

Mr. Juſtice WILLES and Mr. Juſtice ASHHURST concurred.

BOTH ORDERS QUASHED.

Vide ante, No. 83. *accord.*

No. 233. Rex *v.* Inhabitants of Framlingham.

Wedneſday 30th June 1773.

A *Certificate* may be avoided, and Settlement gained in the *certificated* Pariſh, by *really* and *bonâ fide* taking a Tenement of the *yearly Value* of 10*l.* And it ſhould ſeem, that the *whole* Family cannot be removed, where *one* of them only aſks Relief.

ON *Friday* the 18th of this ſame Month, Mr. *Dunning* moved to quaſh an Order of Seſſions, which confirmed an Order of two Juſtices made for removing the Paupers from *Martleſham* in *Suffolk* to *Framlingham* in the ſame County.

The Order of Seſſions, after reciting an Appeal againſt an Order of two Juſtices for removing *Simon Churchyard*, Cordwainer, and *Elizabeth* his Wife; *Rebecca Churchyard*, Spinſter, aged 18 Years or thereabouts; *William Churchyard* aged 15 Years or thereabouts; and *Elizabeth Churchyard* aged ſix Years or thereabouts; from the Pariſh of *Martleſham* in *Suffolk* to the Pariſh of *Framlingham* in the ſame County; ſtates that it appeared to them, That the ſaid *Simon Churchyard* and *Elizabeth* his Wife, having a legal Settlement in *Framlingham*, obtained a *Certificate* for themſelves and for the ſaid *Rebecca* and *Mary* the *then Children* of the ſaid *Simon Churchyard*, bearing Date on 3d *June* 1757; and by Virtue thereof went to reſide in *Martleſham*, and there had the ſaid *William* and *Elizabeth* their Children. That the ſaid *Simon Churchyard* reſided in *Martleſham*, for ſome Years, under the ſaid Certificate; and on or about 29th *July* 1765, did verbally contract and agree with one *Stephen Hayle* of *Martleſham* Farmer, to hire of him the ſaid *Stephen Hayle* a Publick Houſe called the

the *Lamb* at *Marlteſham* aforeſaid, with an Orchard, Yard, Stable, and one half of the Apples growing in the ſaid Orchard (being Part of the Farm in the Occupation of the ſaid *Stephen Hayle*,) at and *under the yearly Rent of ten Pounds*, payable half-yearly: And it was at the ſame Time agreed, that *all Pariſh-Rates and Charges* with which the ſaid Premiſſes ſhould become chargeable, ſhould be *paid by the ſaid Stephen Hayle*, and *not by the ſaid Simon Churchyard* the Tenant. That ſoon after, the ſaid *Stephen Hayle* drew up an Agreement in Writing, with reſpect to the above Hiring, in the Words following, *viz.* " 29th *July* 1765. Then leat to " Mr. *Simon Churchyard*, the *Lam* in *Martleſham*, Orchard and " Yards on the lower Part of the Hows, and the Stall that belong " to the Cartlody; the one half of the Apples to be the Property " of the ſaid *Stephen Hayle*, and the other Part the Property of " the ſaid *Simon Churchyard*. The *Rent is ten* Pounds *per* Year, " of lawful Money of *Grate Briten*; and to pay the Rent half- " yearly, that is to ſay, at old *Lady* and old *Michelmes* Day. 'Tis " agreed, that if in Caſe *Simon Churchyard* give Warning at a " *Lady*, to leave the Primecies the *Michelmes* following; and " likewiſe if *Stephen Hayle* give Warning at a *Lady*, to quit the " Primeces the *Michelmes* following; the ſaid *Stephen Hayle* do " agree to the abovemenſioned Words. As Witneſs my Hand: " *Stephen Hayle*."—And brought the ſame to the ſaid *Simon Churchyard*, to be ſigned. To which the ſaid *Simon Churchyard objected*, on Account of no Mention being made in ſuch written Agreement, with reſpect to his being *exonerated from the Payment of Rates*: To which, the ſaid *Stephen Hayle* replied " that it was " an Omiſſion *through Forgetfulneſs*; but that he *meant* the Con- " tract ſhould be UNDERSTOOD *in that Manner*." Which Agreement appeared to the Court to be ſigned by the ſaid *Stephen Hayle* only: But the ſaid *Stephen Hayle*, on his Examination upon Oath, declared " that he believed the ſaid *Simon Churchyard ſigned a* " *Counterpart* thereof; but could not find the ſame, but had ſeen " it about two or three Years ſince, according to the beſt of his " Remembrance and Belief." And that the ſaid *Simon Churchyard* entered on the ſaid Premiſſes at *Michaelmas-Day* following, and held the ſame for *four Years* then next following, and *paid* the ſaid *Stephen Hayle* the yearly Rent of *ten Pounds* for each of the ſaid Years. And it further appeared upon the Examination of the ſaid *Stephen Hayle* upon Oath, and alſo of the ſaid *Simon Churchyard*, that the ſaid *Simon Churchyard did* NOT *pay* ANY *Pariſh-Rates* for

FRAMLING-HAM and MARTLE-SHAM.

FRAMLINGHAM and MARTLESHAM.

the ſaid Premiſſes; but that ALL *the Pariſh Rates* were *paid by him the ſaid Stephen Hayle*, for the *whole Time* that the ſaid *Simon Churchyard* occupied the ſaid Premiſſes, purſuant to his the ſaid *Stephen Hayle's* Undertaking and Agreement with the ſaid *Simon Churchyard* at the Time the ſaid *Simon Churchyard* firſt contracted for the ſaid Premiſſes. And it further appeared on the reſpective Examinations of the ſaid *Stephen Hayle* and *Simon Churchyard* upon Oath, that *in Caſe* the ſaid *Simon Churchyard had paid* the Pariſh-Rates aforeſaid, the ſaid *Stephen Hayle would not have expected to be paid, nor would the ſaid Simon Churchyard* have *conſented to pay* the ſaid yearly Rent of *ten Pounds* for the ſaid Premiſſes. And it further appeared to this Court, that the ſaid *Simon Churchyard* and *Elizabeth* his Wife, *William Churchyard* and *Elizabeth Churchyard* their Children, or any or either of them, did *never aſk Relief or ever become chargeable to* the ſaid Pariſh of *Martleſham:* But that the ſaid *Rebecca Churchyard*, on the 14th Day of *December* laſt paſt, (at which Time ſhe *reſided with the ſaid Simon Churchyard*, her Father, in *Martleſham* aforeſaid, as Part of his Family,) by Reaſon of her being then big with Child, (of which ſhe has ſince been delivered, and is born a Baſtard,) *applied* to the Pariſh-Officers of *Martleſham* aforeſaid, *for Relief*, (her Father not being able, in Point of Circumſtances, to aſſiſt her.) Accordingly, the ſaid *Rebecca Churchyard* did aſk Relief, by aſking the ſame of one of the ſaid Pariſh-Officers of *Martleſham*; who gave her two Shillings. And that immediately after ſuch Relief was given by the ſaid Pariſh-Officer of *Martleſham* to the ſaid *Rebecca Churchyard*, the ſaid Order of Removal was obtained.

Whereupon, this Court [the Seſſions] is of Opinion, upon the Facts only above ſtated, "That ſuch Hiring and Occupation was "EVASIVE, and *not a bonâ fide* Hiring of *ten* Pounds a Year, *ſo as* "*to intitle a Certificate-Perſon* to a Settlement, and therefore that "NONE of the ſaid Paupers gained any Settlement in the ſaid Pa-"riſh of *Martleſham*;" and doth therefore *confirm* the ſaid Order of the ſaid two Juſtices for the Removal of *Simon Churchyard* and *Elizabeth* his Wife, *Rebecca Churchyard*, *William Churchyard*, and *Elizabeth Churchyard*, the Children, from the ſaid Pariſh of *Martleſham* to the ſaid Pariſh of *Framlingham*.

Mr. *Dunning* made two Objections to the Determination of the Juſtices. Firſt—This Certificate-man gained a Settlement in *Martleſham*, by *really and bonâ fide* taking a Leaſe of a Tenement

of

of the *yearly Value of ten Pounds*, within 9 & 10 *W.* 3. *c.* 11. Secondly—But if it were to be admitted that he did not thereby gain a Settlement in *Martleſham*, but remained ſtill a Pariſhioner of *Framlingham*, under the Certificate; yet none of his Family ought to have been ſent back to *Framlingham*, but the *Perſon who aſked Relief* of *Martleſham*: The Juſtices could not remove the *whole Family*, nor any more of them than *aſked* Relief; which was *Rebecca only*. FRAMLINGHAM *and* MARTLESHAM.

Mr. *Wallace* now ſhewed Cauſe againſt quaſhing theſe Orders. Firſt—This is *not* a *real and bona fide* taking a Leaſe of a Tenement of the yearly Value of *ten* Pounds. It is as much *leſs* than ten Pounds a Year, as the Pariſh-Rates and Charges amount to. This is an *evaſive* Taking, ſo far as it relates to gaining a Settlement. Secondly—By the 8 & 9 *W.* 3. *c.* 30. the Pariſh who gives the Certificate is obliged to receive and provide for the Perſon mentioned in it, together with his or her Family, "whenever *he*, "*ſhe*, or *they* ſhall happen to become chargeable to, or be forced "to aſk Relief of the Pariſh Townſhip or Place to which ſuch "Certificate was given." It is not neceſſary that *all* of them ſhould aſk Relief: If Relief is aſked by *any one* of the Family, the *whole* Family may be removed. *Rebecca* was a Part of this Man's Family; and he was not able to maintain her: Therefore ſhe aſked Relief of the Pariſh. Conſequently, the Certificate-man's Family being become actually chargeable, the Juſtices were authorized to remove them all back to the Pariſh which gave the Certificate.

Mr. *Dunning*, *contra*, argued, 1ſt, That the Act of 9 & 10 *W.* 3. *c.* 11. does not mean that the Perſon muſt take a Tenement of ten Pounds *per Annum* net Money, over and above the Taxes. In ſome Places, the Landlord pays all the Taxes: In other Places, Part of them. Forty Shillings a Year qualifies a Freeholder to vote, though he pays the Land-Tax out of it. The Qualification of a Juſtice of Peace, in like Manner, includes his Land-Tax. This Man had Credit for ten Pounds a Year: And that is the Criterion meant by the Act of Parliament. 2dly, The *Father* never aſked Relief for himſelf or for any of his Family; not even for this Daughter. She was manifeſtly a grown Perſon; and aſked Relief for herſelf, and for no one elſe. Theſe ſeveral Perſons are independent, each of the other: And that *one* only, who aſked Relief, ought to be removed. Yet the Juſtices have made the ſame Adjudication with Reſpect to *all* of them, namely,

FRAMLINGHAM and MARTLESHAM.

"that *they* are become actually chargeable"; and have removed them *all*: Which Concluſion, made by the Juſtices, is not warranted by the Premiſſes.

LORD MANSFIELD was gone.

THE REST OF THE COURT agreed that upon the *firſt* Objection, the Orders ought to be quaſhed. For they were of Opinion "that this was a *good* Taking a Leaſe of a Tenement of the "yearly Value of ten Pounds," within the Intention and Meaning of the Act of Parliament. It turns upon the *Credit* given to the Certificate-Perſon. Now here, Credit is given to this Man, for 10*l.* a Year. He contracted for it at that Rent: And he paid that Rent to his Landlord for it. It was a *real and bonâ fide* Taking a Tenement of that yearly Value.

This Opinion upon the firſt Point rendered it unneceſſary to enter into a formal Diſcuſſion of the ſecond: But

Mr. Juſtice ASTON inclined to be of Opinion "that if ſeveral Perſons reſide in a Pariſh under the ſame Certificate, the "aſking Relief by a *ſingle one* of them would *not* render the reſt "removeable." The Certificate-Act, 8 & 9 *W.* 3. *c.* 30. § 1. ſays "that the Pariſh who gives the Certificate ſhall receive and pro"vide for the Perſon mentioned in it, together with his Family, "whenever he ſhe or they ſhall happen to become chargeable, or "aſk Relief: And *then*, and *not before*, it ſhall be lawful for any "ſuch Perſon, and his or her Children, to be removed to the Pa"riſh from whence ſuch Certificate was brought." And it muſt be *adjudged* by the Juſtices, "that ſuch Perſon is *actually become* "*chargeable*," before they can legally make an Order of Removal. Now how can the Juſtices be authorized to make ſuch an Adjudication upon a Perſon who in Fact is *not* become chargeable, *nor ever has aſked Relief?*

PER CUR.—Rule made abſolute.

BOTH ORDERS QUASHED.

N. B. Dr. *Burn* obſerves, that there ſeem to be ſome Circumſtances in the above Caſe, from whence perhaps it might be difficult to form one uniform general Rule, as to the Right of removing the *whole* Family, where *one* of them only aſks Relief. *Vide* 3 *V.* 359. *Ed.* 1785.

Michaelmas Term

14 Geo. 3. 1773.

Rex *v.* Inhabitants of Weſterleigh. No. 234.

Saturday 27th Nov. 1773.

Hiring for a Year, with Liberty of Abſence *to ſerve in the Militia*, will gain a Settlement.

TWO Juſtices removed *William Ayliff*, *Mary* his Wife, and their four Children, (ſpecifying their Names and Ages,) from *Old Sodbury* in the County of *Glouceſter* to *Weſterleigh* in the ſame County: And, on Appeal, the Seſſions confirmed their Order; ſtating the following Facts, *viz.*

That the ſaid *William Ayliff* was hired for a Year and ſerved for a Year with and to *Iſaac Highmore* of and in the ſaid Pariſh of *Weſterleigh*; and was, after the Expiration of that Year, *entered and ſworn* to ſerve as a Subſtitute in the *Glouceſterſhire Militia* for three Years.

That about a Year and an half after he was ſo entred and ſworn, he was *hired for a Year* to *Anne Tyler* of the Pariſh of *Old Sodbury* aforeſaid, *to ſerve her for a Year*: But at the *Time* of his being ſo to her hired, he told her "that he was in the *Militia*, and he "MIGHT BE ABOUT A MONTH IN THE YEAR to *attend in that* "*Duty*;" and at the ſame Time told her "that he would *pay a* "*Man to ſerve in his Place*, or elſe would *make her an Allowance* "out of his Wages for the Time he was abſent."

That he entered on his ſaid Service with the ſaid *Ann Tyler*, and ſerved her till the Month of *May* following; and then joined and *attended the Militia* for *thirty Days*; and afterwards returned to the ſaid Service of the ſaid *Ann Tyler*, and continued therein until the End of his ſaid Year, and then made her an Abatement of

Westerleigh and Old Sodbury.

of eight Shillings out of his Wages for the Time he was abſent out of her Service.

On *Wedneſday* 10th *November* 1773, Mr. *C. T. Morgan* moved for and obtained a Rule to ſhew Cauſe why theſe Orders ſhould not be quaſhed.

The Juſtices, he ſaid, had miſtaken the Law, in ſuppoſing *Ayliff's* laſt legal Settlement to be at *Weſterleigh:* For that he had gained a ſubſequent Settlement at *Old Sodbury*, by being hired for a Year and ſerving for a Year to Mrs. *Tyler*, of this latter Pariſh.

Mr. *Bearcroft* and Mr. *Selwyn* now ſhewed Cauſe againſt quaſhing theſe Orders. They argued that this Man gained *no* Settlement at all in *Old Sodbury:* For that here was no Hiring for a Year. It is true, indeed, that the Words are—" *to ſerve her for a Year.*" But a Hiring for a Year, with Liberty to be abſent for a Month, is really only a Hiring for eleven Months: And when a Part of the Year is *excepted out of the original Contract*, no Settlement can be gained. Now, here, it was ſtipulated *at the Time of the Hiring*; it was Part of the *original Contract*; " that he might be abſent " about a Month of the Year." In Support whereof, they cited the Caſe of *Biſhop's Hatfield* (reported *ante*, pa. 439. No. 141. and mentioned and affirmed by Mr. Juſtice Aston, *ante*, No. 229.) where Liberty to let himſelf to any other Perſon during the Harveſt-Month, was holden to make it no Hiring for a Year. They added, that by the Militia Act, the Man was *not ſui juris;* He was entered and ſworn " to ſerve in the Militia for three years;" and was liable to be called out to Service, at *any Time* of the Year. Therefore they prayed to have the Orders affirmed.

Mr. *Dunning* and Mr. *Morgan, contra*, argued that this was a *good Hiring for a Year*; and that the Pauper was *ſui juris* to hire himſelf out for a Year. It is poſitively ſtated " that he was hired " to *Ann Tyler for a Year*, to ſerve her *for a Year.*" And what follows is not repugnant to this poſitive State of that Fact: It amounts only to an Agreement to diſpenſe with his *perſonal* Service for about a Month, upon the Terms he propoſed (of hiring a Subſtitute, or making a proportionable Allowance,) *in Caſe* ſuch an Event ſhould *happen*. The Caſe of *Biſhop's Hatfield* was a Hiring from *Michaelmas* to *Michaelmas*, with Liberty " to *let himſelf* for " the Harveſt Month, *to any other* Perſon": Which was, undoubtedly, only a Hiring for eleven Months; and *no Relation* at all

all ſubſiſted between the Maſter and Servant, during the Harveſt-Month. Whereas, here it was *contingent*; and the Man was to ſerve the whole Year, if the Contingency did not happen: And he actually did ſerve the whole Year, except theſe thirty Days, and made a proportionable Abatement out of his Year's Wages. Here was an *Alternative:* It might have happened, that he had *not* been called out to ſerve in the Militia, within the Compaſs of his Year.

LORD MANSFIELD was not in Court.

Mr. Juſtice ASTON ſaid, This was a particular Caſe. But he thought it reconcileable to thoſe of the King and the Inhabitants of *Beccles* (*ante*, pa. 230. No. 78.) and the King againſt the Inhabitants of *Goodneſtone*, (*ante*, pa. 251. No. 85.) and diſtinguiſhable from that of *Biſhop's Hatfield*. In the *Beccles* Caſe, the Hiring was for a whole Year; and the Contract was not diſſolved: For, the Abſence was with the Conſent of the Maſter, and diſpenſed with too, by his receiving the Servant again. In the Caſe of *Goodneſtone*, the Hiring was likewiſe for a Year; the Maſter conſented to the Abſence; the Servant hired a Subſtitute, and paid him: There was no Diſſolution of the Contract. Abſence for a particular Time with the Maſter's Leave, not agreed for at the Time of the Hiring, does not vitiate the Contract. But in the Caſe of *Biſhop's Hatfield*, the original Hiring was with Liberty to let himſelf, for the Harveſt-Month, to any other Perſon. That made a clear Chaſm in the original Contract: It was plainly a Hiring for leſs than a Year. In the preſent Caſe, the Man is hired for a Year, to ſerve for a Year; but mentions an Event that *might* happen, of his being called out to attend his Militia Duty; and told his Miſtreſs, that *if* it ſhould ſo happen, he would either pay a Man to ſerve in his Place, or make her an Allowance out of his Wages. This is *not a Chaſm* in the Contract, but a Diſpenſation with the perſonal Service.

Mr. Juſtice WILLES premiſed, that Settlements are to be favoured; and that Militia-Men ought not to have any additional Hardſhips put upon them, if it can be avoided. However, he could not help thinking that the Caſe of *Biſhop's Hatfield* was very like the preſent Caſe; and that the Abſence was as much Part of the Contract, in the one as in the other. If the Miſtreſs did not expreſsly agree to it, ſhe at leaſt acquieſced. Indeed in the preſent Caſe, the Servant agreed, "either to find a Subſtitute, or to "abate out of his Wages." Now this was at the Election of the

WESTER-LEIGH *and* OLD SOD-BURY.

the Miſtreſs: And ſhe diſpenſed with his Abſence upon an Abatement out of his Wages. Upon this Diſtinction, and this only, I would, for the Advantage of Settlements, diſtinguiſh this Caſe from that of *Biſhop's Hatfield*.

Mr. Juſtice ASHHURST ſaid, that in a Caſe which might affect a vaſt Number of Militia-Men, he was for leaning in Favour of their gaining Settlements: And he thought this Caſe to be diſtinguiſhable from that of *Biſhop's Hatfield*. That Caſe was certainly no more than a Hiring for eleven Months: But here was an *Alternative*; and it *might happen* "that the Servant "ſhould *not* be called out." Therefore he concurred in ſupporting the Settlement.

BOTH ORDERS QUASHED.

See the Caſe of *the King againſt the Inhabitants of Winchcomb*, *Doug.* 376. S. P.

No. 235.

Rex *v.* Inhabitants of Newnham.

Saturday 27th Nov. 1773.

Taking a Tenement, of the *yearly Value* of 10*l.* will gain a Settlement, though it be afterwards *occupied* by the Tenant, *jointly* with another Perſon.

MR *Pepys* had moved, on *Thurſday* the 11th of this Month, for a Rule to ſhew Cauſe why the following Orders ſhould not be quaſhed: And Mr. *Manſfield* and Mr. *Morgan* now ſhewed Cauſe.

Two Juſtices removed *Hathaway Denton*, *Mary* his Wife, and their ſix Children, (ſpecifying their Names and Ages,) from *Awre* in *Glouceſterſhire* to *Newnham* in the ſame County: And the Seſſions upon Appeal, confirmed their Order; ſtating the following Caſe.—

The ſaid *Hathaway Denton* and one *Richard Mann* his Wife's Father, *jointly* rented ſtocked and occupied an Eſtate at *Newnham* aforeſaid, of eighty Pounds a Year, for three Years.

The ſaid *Richard Mann* dying about the End of that Time, the ſaid *Hathaway Denton* ſoon afterwards did, *alone*, take a Houſe of one *Richard White*, of the Pariſh of *Awre* aforeſaid, at the yearly Rent of three Pounds; and took another Eſtate conſiſting of Lands, of one *John Serjeant*, of *Awre* aforeſaid, at the yearly Rent of eight Pounds.

The ſaid *Richard Mann* leaving a Widow; and ſhe and the ſaid *Hathaway Denton* being upon the Death of the ſaid *Richard Mann*, jointly

jointly poſſeſſed of the Remainder of the Stock which had been on the Eſtate at *Newnham*; they the ſaid *Hathaway Denton* and the ſaid Widow *went and lived* at the ſaid Houſe at *Awre*; and they JOINTLY *occupied* that Houſe and the ſaid Eſtate of eight Pounds a Year, for one Year; the *Stock* on the ſaid Houſe and Eſtate being *partly* the Property of the ſaid *Hathaway Denton*, and the *other Part* the Property of the ſaid Widow; and ſometimes *one* of them ſold ſome Part of the ſaid Stock, and received the Money for the ſame; and at other Times, the *other* of them ſold other Parts of the ſaid Stock, and received the Money for the ſame: And that at the *Time of taking* the ſaid Tenements by *Denton*, *neither* the ſaid *Richard White* nor the ſaid *John Serjeant knew of any Connection* ſubſiſting between the ſaid *Hathaway Denton* and the ſaid *Elizabeth Mann*. And that a *Moiety of the Stock* was *more than ſufficient* to ſtock the ſaid Houſe and Farm: And that *Denton* ONLY was *perſonally reſponſible for the Rent*.

Mr. *Pepys*, alledging "that *Hathaway Denton* had clearly "gained a Settlement in *Awre*," moved for a Rule to ſhew Cauſe why both theſe Orders ſhould not be quaſhed. And ſuch Rule was granted to him.

The Gentlemen who ſhewed Cauſe, argued that *Denton* did *not* gain a Settlement in *Awre*. For, though he had indeed taken eleven Pounds a Year, yet he *came to ſettle* upon only the *half* of eleven Pounds a Year: And it appears, upon the whole, that he never *took* eleven Pounds a Year *for himſelf*. They admitted, that *if* the whole Taking had been *twenty* Pounds a Year or upwards, then indeed *each* Joint-taker would have gained a Settlement: But as the whole, in the preſent Caſe, amounted only to eleven, each muſt be conſidered as coming to ſettle on only the half of eleven. Conſequently, this Man's Settlement in *Newnham* remained; as he gained none in *Awre*, by coming to ſettle in a Tenement *under* the Yearly Value of ten Pounds. They cited the Caſe of *Duns Tew* (*ante*, pa. 398. No. 128.) and the Caſe of *Marden* (*ante*, pa. 311. No. 111.)

Mr. *Pepys*, premiſing that the Court would lean in Favour of Settlements; and that they would conſtrue the Statutes made on the Subject, all in the ſame Manner and as one Law; obſerved, that the Expreſſion uſed in 13 & 14 *C.* 2. *c.* 12. § 1. of "*coming* "*to ſettle* in a Tenement under the yearly Value of ten Pounds," is explained by 9 & 10 *W.* 3. *c.* 11. to mean *taking a Leaſe* of a Tenement of that yearly Value. The having *Credit* to take a Leaſe of a Tenement of that Value is the *Criterion* of being likely

NEWNHAM and AWRE.

or unlikely to become chargeable. A Perſon fit to be *truſted* with renting a Tenement of the yearly Value of ten Pounds is ſuppoſed *not* likely to become chargeable to the Pariſh. Here, the Pauper *alone* made the *Application* to take the Tenements; And he *alone* was perſonally *reſponſible* for the Rent. The Landlords knew nothing of any one beſides him. He cited the Caſes of *North Nibley* and *Wotton* under *Edge. Foley*, 90. *South Sidenham* and *Lamerton. Stra.* 58. *(v. ante*, pa. 45.) *Rex* v. *Inhabitants of Sandwich*, *(ante*, pa. 44. No. 13.) where Lord *Hardwicke* ſays "that the Ability to occupy a Tenement of ten Pounds a Year "excludes the Preſumption of being likely to become charge-"able." *Rex* v. *Inhabitants of Butley*, *(ante*, pa. 107. No. 33.) *Kniver* and *Stone* Pariſhes, 1 *Str.* 678. *Rex* v. *Inhabitants of Duns Tew*, *(ante*, 398, No. 128.) *Rex* v. *Inhabitants of Shenſton*, *(ante*, pa. 477, 478. No. 151.) The Credit and Ability is the Criterion. *Rex* v. *Inhabitants of Llandverras*, *(ante*, pa. 571. No. 184.)

LORD MANSFIELD was not in Court.

THE OTHER THREE JUDGES declared themſelves all thoroughly ſatisfied "that the Settlement was in *Awre*."

Mr. Juſtice ASTON obſerved, that if two Perſons *jointly* take a Tenement of *leſs* annual Value than twenty Pounds, it is clear that *this* will *not* gain a Settlement to either of them. But a Man who *takes more* than ten Pounds in yearly Value, may let Part of it to *Undertenants*: And this will not deſtroy his Settlement, though it will not gain one to ſuch Undertenants, who pay him leſs than ten Pounds a Year. This was determined in the Caſe of *Llandverras*, *(ante*, 572, 573. No. 184.) This Woman, the Widow *Mann*, was in the Nature of an Undertenant to the Pauper. The Pauper had the *Credit* of taking the Tenement: He *alone* took the Houſe, and likewiſe the Lands. Neither of the Landlords knew of any Connection between the Widow and him: And he only was perſonally reſponſible for the Rent. They were not Partners in *taking* the Tenement, though they were joint-Occupiers of it. She would gain no Settlement by merely being a joint-Occupier, without having been concerned in taking it: Nor ſhall the Perſon who *alone took it*, loſe his Settlement, by letting in a joint-Occupier.

If *Fraud* is not *ſtated*, it ſhall *not be intended*.

BOTH ORDERS QUASHED.

Rex

Rex v. Inhabitants of Stockbridge. No. 236.

Monday 29th Nov. 1773.

TWO Juſtices removed *Aaron Alexander*, *Lucy* his Wife, and their Son and Daughter, (ſpecifying their Names and Ages,) from *Baſingſtoke* in the County of *Southampton* to *Stockbridge* in the ſame County: And on Appeal to the Seſſions, their Order was confirmed, with 40*s.* Coſts, to be paid by the Churchwardens and Overſeers of *Stockbridge* to thoſe of *Baſingſtoke*.

A GENERAL HIRING is a *Hiring for a Year*, where there are no Circumſtances to the contrary.

The Order of Seſſions ſtates the following Facts—

That the Pauper was legally ſettled in *Stockbridge*.

That *he depoſed* "that he was afterwards HIRED to one *Michael* "*Nicholas* of the Pariſh of *Wanſton*, to ſerve him as a Boot-Ketcher "and occaſionally as a *Poſt-Chaiſe Driver*; NO TERM for which "he was to ſerve, being mentioned. That he accordingly went "into the Service of the ſaid *Michael Nicholas*; *and continued in* "*it for one Year*; and was, during that Time, *found by his Maſter* "in Meat Drink and Lodging there; but received *no Wages* for "ſuch Service."

Being croſs-examined, *he depoſed* that the only Converſation that paſſed between him and the ſaid *Michael Nicholas* was as follows. The Pauper aſked the ſaid *Michael Nicholas* "Whether he wanted "a Boot-Ketcher and Driver." The ſaid *Michael Nicholas* ſaid, "Yes." The Pauper replied, "that he was willing to ſerve him." And thereupon, the ſaid *Michael Nicholas bid him go into the Yard and look after the Horſes.* No Mention was made of Wages, or of Meat Drink or Lodging. That the Pauper quitted the ſaid *Michael Nicholas*; and was afterwards ſent for by one *John Watts*, an Inn-keeper at *Baſingſtoke*. That he went to the ſaid *John Watts*, and aſked him "if he wanted a Driver." To which, the ſaid *John Watts* anſwered, "Yes": And the Pauper ſaid "He ſhould be glad "to ſerve him." Upon which, he was *ordered by the ſaid John Watts to take Care of his Horſes, and not to drive them too hard.* That *no Mention* was made of Meat Drink or Lodging. That the Pauper *ſerved* the ſaid *John Watts* as a Poſtillion, *for a Year*, in the Pariſh of *Baſingſtoke*; being found by him in Meat Drink and Lodging there; but received *no Wages*. That he the ſaid Pauper *underſtood*, and *believes* that the ſaid *Michael Nicholas* and *John Watts*

STOCK-BRIDGE *and* BASING-STOKE.

both *underſtood*, that he was to have his Meat Drink and Lodging while he continued with them; and that the Pauper *thought* he was at Liberty to leave either the ſaid *Michael Nicholas* or *John Watts*, whenever he pleaſed.

That it was proved by ſeveral Witneſſes, "that the *cuſtomary* "Manner of *engaging Poſtillions*, is as above depoſed by the ſaid "Pauper;" and "that the Maſters and Poſtillions *think* themſelves "*at Liberty to part whenever they pleaſe.*"

This Court [the Seſſions] is of Opinion "that the ſaid Pauper "did *not* gain a Settlement, either in the ſaid Pariſh of *Wanſton*, or "*Baſingſtoke*"; and doth accordingly adjudge, that the ſaid recited Order ought to be confirmed: And the ſame is hereby confirmed accordingly.

On *Thurſday* 11th *November* 1773, it was moved to quaſh both theſe Orders; upon a Suggeſtion that the Juſtices had determined wrong, in adjudging the Pauper to remain ſettled at *Stockbridge*, notwithſtanding theſe ſubſequent Hirings and Services.

Cauſe was now ſhewn by Mr. *Dunning* and Mr. *Kerby*, againſt quaſhing theſe Orders. They argued that the ſubſequent Hirings were *not Hirings for a Year*; nor were ſo underſtood, by either the Maſters or the Servant. It was neither permanent nor obligatory. The Maſter contracted for nothing, not even for Meat, Drink or Lodging: Either Side were, and thought themſelves, at full Liberty to quit, at Pleaſure. In the Caſe of *Gregory Stoke* and *Pitminſter* Pariſhes, *Mich.* 13 *G.* 1. an Offer to the Girl, "that ſhe ſhould "have Meat Drink &c. if ſhe would come and live with her Rela-"tion," gained the Girl no Settlement; though ſhe lived four Years as a Servant, in Acceptance of the Offer. So, in the Caſe of *Weyhill* (*ante*, pa. 491. No. 157.) ſix Years Continuance gained the Child no Settlement; becauſe there was no Contract for Continuance, Service, Wages, or Gratuity. This preſent Caſe is not a general Hiring, (and conſequently a Hiring for a Year,) like that of *Berwick St. John's* (*ante*, pa. 502. No. 160.) "Go into *Ned Hill's* "Place." Neither did the Juſtices look upon it to be a Hiring for a Year: For, if they had conſidered it as a Hiring for a Year, it would have been contradictory to that Idea, to have been of Opinion, "That the Pauper did *not* gain a Settlement in either *Wan-*"*ſton* or *Baſingſtoke.*"

Mr. *Manſfield* and Mr. *Groſe*, who were for quaſhing the Orders, anſwered that the Court muſt take it, that the Juſtices did believe what was depoſed by the Pauper. And it appears, upon the

STOCK-BRIDGE *and* BASING-STOKE.

the whole of the Evidence, to be a good Hiring for a Year. A *general* Hiring is a Hiring for a Year. If it was a Contract *at Will*, it is a Contract for a Year, *till* the Will is determined. Nothing is here ſtated, which limits the Hiring, or tends to ſhew that it was meant to be a Hiring for leſs than a Year: On the contrary, there is enough to ground a fair Preſumption that it was meant to be Hiring for a Year.

LORD MANSFIELD was abſent.

Mr. Juſtice ASTON declared himſelf fully ſatisfied that the Juſtices were miſtaken in their Opinion.

A *general indefinite Hiring* is a Hiring *for a Year*; unleſs ſomething appears, that may raiſe a Preſumption to the contrary. In Proof of which, he cited the Caſe of *Weybill*, (*ante*, pa. 491. No. 157.) and that of *St. Peter's* in *Dorcheſter* (*ante* pa. 513. No. 165.) the Caſe of *Wincaunton*. (*ante*, pa. 299. No. 107.) * Now here is enough ſtated, to ſhew a general indefinite Hiring; which is, by Law, a Hiring for a Year: And nothing is ſtated, to contradict it, or to raiſe a Preſumption to the contrary. Therefore the Preſumption muſt be "that the Hiring was *for a Year*."

Mr. Juſtice WILLES and Mr. Juſtice ASHHURST expreſſed themſelves to the ſame Effect.

ORDERS QUASHED.

* See the ſeveral Authorities referred to at the End of that Caſe, p. 301.

Hilary

Hilary Term

14 Geo. 3. 1774.

No. 237.

Rex v. Inhabitants of Stockley Pomroy.

Wednesday 26th January 1774.

An *Annuity* iſſuing out of an Eſtate, on which the *Annuitant* reſides, will not gain a Settlement.

MR. *Heath* moved, on *Friday* 29th *June* 1773, to quaſh an Order of Seſſions which vacated an Order of two Juſtices, made for removing *John Whitten*, and *E. A. W.* and *S.* his Children, from *Stockley Pomroy* in the County of *Devon*, to *Cheriton Fitzpayne* in the ſame County.

The Order of Seſſions ſtates the following Facts; *viz.* It appearing to us, that *Margaret Enworthy*, being poſſeſſed of an *Eſtate* in the Pariſh of *Cheriton Fitzpayne*, for a Term of Years determinable on the Death of *Sarah Whitten* the Mother of *John Whitten* the Pauper, in and by her laſt Will and Teſtament in Writing duly executed, deviſed unto her Grandſon *John Whitten* the Pauper, the Sum of *ten Pounds a Year*, to be paid by her Executors in Truſt, therein named, *out of her Eſtate*, during the ſaid *John Whitten's* Mother's Life: And if her Grandſon *John Whitten* ſhould happen to die before his Mother *Sarah Whitten*, that then his Brother and Siſter *William* and *Mary* ſhould have and enjoy the aforeſaid ten Pounds a Year, of like lawful Money, to be paid by her Executors in Truſt therein named, yearly and every Year during the Life of her Daughter *Sarah Whitten* aforeſaid. And if in Caſe *William Whitten* and *Mary Whitten* her Grandchildren aforeſaid ſhould either of them happen to die before their Mother *Sarah Whitten*, that then her Will and Pleaſure was, that the Survivor of them ſhould have and enjoy the aforeſaid Legacy of ten Pounds a Year in Man-

ner and Form aforeſaid payable. That the ſaid Teſtatrix ſoon afterwards died, without altering or revoking her ſaid laſt Will and Teſtament; and left, at the Time of her Deceaſe, the *Leaſehold Eſtate above mentioned*, and *Effects* to the Amount of *thirty two Pounds* only and no more. That the Pauper *John Whitten* the Father, being *legally ſettled* in the ſaid Pariſh of *Stockley Pomroy*, and conſiderably in Debt, in order to avoid his Creditors, went to reſide in the ſaid Pariſh of *Cheriton Fitzpayne*, and there *reſided with his Mother* ON *the ſaid Leaſehold Eſtate*, and did carry on the Buſineſs of a Jobber of Cattle, during the Continuance of the Annuity and while the ſame was due and payable, for the Space of *forty Days* and upwards, between *Midſummer* in the Year 1770 and *Midſummer* in the Year 1771. And that it does *not* appear to us, that the ſaid Annuity was *rated or aſſeſſed* to any of the public Levies.

We therefore do adjudge the Pariſh of *Stockley Pomroy* to be the laſt legal Settlement of the Pauper, and *vacate* the ſaid Order.

Mr. *Heath* objected to this Adjudication of the Seſſions "that "the Pauper's laſt legal Settlement was not in *Stockley Pomroy*": For that he had gained a ſubſequent one at *Cheriton Fitzpayne*, by reſiding there forty Days, *upon the Eſtate out of which* his Annuity of ten Pounds a Year was payable.

Mr. *Dunning* now ſhewed Cauſe againſt quaſhing the Order of Seſſions. He denied that any Settlement could be gained in *Cheriton Fitzpayne*, by this Annuitant's having reſided there forty Days, upon the Leaſehold Eſtate which was chargeable with his Annuity. He *lurked* there, as an inſolvent Debtor: He did not reſide upon his *own*. If an Annuity iſſues out of a Leaſehold Eſtate, that does not make the Annuity *local*. But this is not a Rent-Charge; nor is it tied up to the Leaſehold Eſtate, or even referred to it: It is payable "*out of* the Teſtatrix's ESTATE;" generally; all her Eſtate, leaſehold and perſonal, indefinitely. It is payable out of her *Aſſets*, as long as they laſt. It gave the Legatee *no Property* in the Pariſh of *Cheriton Fitzpayne:* And he could not gain a Settlement there, by reſiding upon what was *not* his Property.

Mr. *Mansfield* and Mr. *Heath* endeavoured to ſhew that this was a Reſiding upon his *own*; that he could not have been removed from it; and that he gained a Settlement by reſiding 40 Days upon it. They argued, that it was a *Rent-Charge* upon and out of

STOCKLEY POMROY *and* CHERITON FITZPAYNE.

of this Leaſehold Eſtate: The Words "*out of her Eſtate*" muſt mean *this Leaſehold Eſtate* in *Cheriton Fitzpayne*. It is a ſpecific Charge; and gives a ſufficient Property, to gain a Settlement. He had a Right to come upon it, to diſtrain: And the Removal of him from it would amount to a Diſſeiſin. He could not be conſidered as a Vagrant or Vagabond, or to be within the Meaning and Intention of the Statute: He was in a much better Condition than a Perſon who has only Credit enough to rent ten Pounds a Year: Yet ſuch a Perſon is not within the Intention of this Law.

LORD MANSFIELD ſaid there was no Colour for adjudging the Pauper to have gained a Settlement in *Cheriton Fitzpayne*. He did not go thither, to reſide upon his *own*: He abſconded there, to avoid his Creditors. This was *no ſpecific* Legacy: It is payable out of her whole perſonal Eſtate. But if it were a ſpecific Legacy, has a ſpecific Legatee any Right to go and *live upon* the Eſtate? If it had been a Rent-Charge out of a Freehold, it would not give a Right to *live upon* ſuch Freehold. But this Man had only a *pecuniary* Demand. There was no Colour for his going to live upon this Leaſehold Eſtate as his own.

THE OTHER THREE JUDGES concurring,

THE RULE WAS DISCHARGED; and THE ORDER of SESSIONS AFFIRMED.

Eaſter

Eaſter Term

14 Geo. 3. 1774.

Rex *v.* Inhabitants of Creech St. Michael's. No. 238.

Monday 25th April 1774.

EVIDENCE of *Birth* and *Identity*.

ON *Thurſday* the 3d of *February* laſt, Mr. *Hobhouſe* moved to quaſh an Order of Seſſions made for diſcharging an Order of two Juſtices, made for removing *John Every*, *Grace* his Wife, and their ſix Children, (ſpecifying their reſpective Names and Ages,) from the Pariſh of *Creech St. Michael* in the County of *Somerſet* to the Pariſh of *Pitminſter* in the ſame County.

The Caſe ſtated by the Seſſions, was as follows—

Upon hearing the Appeal, (the Pauper *John Every* being run away,) in order to prove his Birth in the Pariſh of *Pitminſter*, the following *Copy of a Regiſter* was produced, taken from the Pariſh-Regiſter of *Pitminſter*—" Chriſtenings 1735. *John*, Son of *John* " *Every* and *Mary* his Wife, *baptized December* 5."

John Carter was then called, to prove that Pauper lived many Years ſince, with him: That *John Every*, who lived in *Pitminſter*, and died long ago, was *conſidered* as the Pauper's Father; and that he knew *Mary Every*, who lives in *Pitminſter*, and whom he *underſtood* to be the Pauper's Mother, and *heard* the Pauper *call her*, " *Mother*."

The Court [of Seſſions] was of Opinion " that this was NOT " *ſufficient Evidence* to prove the *Birth*, and to *identify* the Pau-

Creech St. Michael and Pitminster.

"per; as *better* Evidence *might* have been adduced for that Purpose."

The Mother was proved to have been ſubpœnaed: But ſhe did not attend; although it did not appear that ſhe was under any legal Diſability of ſo doing.

Lord Mansfield ſeemed, at the Time of making the Motion, to think this Evidence ſufficient.

Rule to ſhew Cauſe.

And Cauſe being now ſhewn by Mr. *Hotchkins* and Mr. *Heath*; who were oppoſed by Mr. *Gould*.

The Order of Sessions was quashed; and the original Order affirmed.

No. 239.

Rex *v.* Inhabitants of Weddington.

Saturday 7th May 1774.

Apprenticeſhip of an *Infant* may be diſſolved, *with the Conſent of all Parties concerned.*

Upon the firſt Day of this Term (*Wedneſday* 20th *April* 1774,) Mr. *Mansfield* moved to quaſh an Order of Seſſions which confirmed an Order of two Juſtices made for removing *Thomas Lawrence*, *Mary* his Wife, and three Children, (naming them, and ſpecifying their Ages,) from *Chilvers Coton* in *Warwickſhire* to *Weddington* in the ſame County.

The Caſe agreed on both Sides, and ſtated upon the Order of Seſſions, was this—

Thomas Lawrence, the Pauper, was *born* in the Pariſh of *Chilvers Coton*, where his Father then reſided *under a legal Certificate* from the ſaid Pariſh of *Weddington*, and where he (the Father) ſtill reſides under the ſame Certificate. In *June* 1748, the Pauper, (being then of the Age of eight Years and an half,) bound himſelf Apprentice by Indenture, with his Father's Conſent, (who was a Party to the Indenture,) to *William Meigh* of the ſaid Pariſh of *Chilvers Coton*, for ſeven Years; and ſerved him in the ſaid Pariſh of *Chilvers Coton*, under the ſaid Indenture one Year and an half; and

and then the ſaid Indenture was *deſtroyed, by Conſent* of the *Maſter*, the *Father*, and the APPRENTICE. The Pauper, within half a Year afterwards, bound himſelf Apprentice by Indenture, with his Father's Conſent, to *Thomas Maydlin* of the Pariſh of *Bulkington* in the ſaid County of *Warwick*, for ſeven Years; and ſerved the ſaid *Thomas Maydlin* in the ſaid Pariſh of *Bulkington*, under the ſaid laſt mentioned Indenture, *four Years*; and then this Indenture was *deſtroyed by Conſent* of the ſaid *Thomas Maydlin* the *Maſter*, the *Father*, and the APPRENTICE. The Pauper, after this, returned into the ſaid Pariſh of *Chilvers Coton*, and bound himſelf Apprentice, by Indenture, to one *Shaw* in the ſaid Pariſh of *Chilvers Coton*, for two Years, and *duly ſerved* the ſaid *Shaw* in the ſame Pariſh, under the ſaid laſt mentioned Indenture, the whole of the ſaid *two Years*. The Pauper, in about three Years next after the Expiration of his ſaid Apprenticeſhip to the ſaid *Shaw hired himſelf for a Year* to *Lawrence Smith* of the ſaid Pariſh of *Chilvers Coton*; and *duly ſerved him*, in the ſame Pariſh, *for a Year*, under the ſaid Hiring. And the Pauper, being *actually chargeable* to the ſaid Pariſh of *Chilvers Coton*, was removed by the ſaid Order of the ſaid two Juſtices, from thence to the ſaid Pariſh of *Weddington:* And the Court [of Seſſions] *confirmed* the ſaid Order.

WEDDINGTON *and* CHILVERS COTON.

Mr. *Manſfield's* Objection was, that this Pauper *did not remain* under the Character of a Certificate-Perſon; having got clear of that Impediment to his gaining a Settlement in the Pariſh to which he was originally certificated, by having obtained a Settlement in *Bulkington: After which*, he was free to gain a ſubſequent Settlement *in* the Pariſh to which he was originally certificated. For, the Child of a certificated Perſon, born in the Pariſh to which its Parent came by Certificate, is not under the Reſtraint of ſuch Certificate, as to any *other* Pariſh; but may gain a Settlement in any *third* Pariſh, by ſerving an Apprenticeſhip in ſuch third Pariſh. (*v. ante*, pa. 186. No. 65. and pa. 270. No. 92.) And this Pauper did gain a Settlement in *Bulkington*; his firſt Indenture to *Meigh* having been cancelled and deſtroyed by the mutual and joint Conſent of his Maſter, his Father, and himſelf. And by thus gaining a Settlement for himſelf at *Bulkington* he got quite clear of the Certificate from *Weddington* to *Chilvers Coton*; and was, afterwards, as much at Liberty to gain a ſubſequent Settlement at *Chilvers Coton*, as at any other Place.

WEDDINGTON *and* CHILVERS COTON.

Mr. *Wallace* and Mr. *Wheeler* now ſhewed Cauſe. They denied that the Pauper ever gained any Settlement in *Bulkington:* And conſequently he remained reſtrained from gaining a Settlement in *Chilvers Coton,* by any other Act than one of the two ſpecified in 9 & 10 *W. & M. c.* 11. (*v. ante,* pa. 186. No. 65. pa. 260. No. 88. pa. 314. No. 112.) The firſt Indenture was not properly cancelled: The *Infant* could not conſent to the Diſcharge of it. An Infant's Conſent is *void.* It muſt be done by Juſtices of Peace, (*v.* 20 *G.* 2. *c.* 19. § 3.) or, in *London,* by the Chamberlain. The Conſent of the Maſter and Apprentice will not do, without the Allowance of a Magiſtrate: And the Father's being a Party to it, makes no Difference. They cited, and relied upon the Caſe of *Auſtrey,* (*ante,* pa. 441. No. 142.) where the Infant's Conſent was conſidered as no Conſent at all: "For, the Conſent of an Infant-Apprentice can ſignify nothing, "nor be of *any Validity.*" He was therefore a *continuing* Apprentice to *Meigh,* of *Chilvers Coton,* at the Time of his being bound to *Maydlin,* of *Bulkington.*

Mr. *Mansfield* and Mr. *Dunning, contra,* anſwered, that thoſe who make a Contract, may deſtroy it. Here, all who joined in making it have joined in deſtroying it. It muſt be taken, that it was for the *Benefit* of the Infant, to deſtroy it. It was for his Benefit, that he was bound out again at *Bulkington,* where he gained a Settlement. And if it was for his Benefit, to deſtroy it, he might as well join in deſtroying as in making it. The Interpoſition of a *Magiſtrate* is only in Caſe where there is a *Complaint* againſt the Maſter or Miſtreſs: It is upon ſuch Complaint, that they have power to diſcharge the Apprentice; not otherwiſe. The Magiſtrate has no Juriſdiction, where there is no Difference or Diſpute. As to the Caſe of *Auſtrey*—That was the Caſe of a poor Pariſh-Child; and the general Expreſſion there uſed muſt be underſtood *ſecundùm ſubjectam materiam,* and applied to the Circumſtances of that particular Caſe. The Principle of that Caſe is certainly right; and it is an Authority for us. The Principle there laid down is, "that the Apprenticeſhip of an Infant can't "be diſſolved without the *Conſent of all Parties concerned.*" There, the Pariſh-Child was bound out by the Pariſh-Officers, with the Allowance of the Magiſtrates, till his Age of 24, purſuant to the Directions of the Statute. The Magiſtrates and Pariſh-Officers were therefore *concerned in the Original Contract:* They were Parties, and had not conſented; though their Conſent,

as

as Parties to it, was neceſſary to the Diſcharge of it. It was rightly determined therefore, in that Caſe, "that the Infant's Conſent "ſignified nothing": For, there were *others* concerned in the Contract, beſides the Maſter and the Apprentice. Whereas here is the Concurrence and Conſent of *all* the Parties concerned; namely, the Maſter, the Father (and Guardian,) and the Apprentice. They cited the Caſe of *St. Mary Kallendar* in *Wincheſter*, (*ante*, pa. 274. No. 95.) to prove "that the Exchange of Indentures between the "Father and the Maſter, with the Conſent of the Apprentice, "(who muſt, in that Caſe, be taken to have been an Infant at the "Time,) amounts to a Cancelling, an Annihilation, an entire "Diſcharge of them to all Intents and Purpoſes." Weddington and Chilvers Coton.

Lord Mansfield—The ſingle Queſtion is, "Whether "the Indenture of Apprenticeſhip in *Bulkington* was void, or not; "there having been a former Indenture; but ſuch former Indenture having been cancelled, by Agreement between the Maſter, "the Father, and the Apprentice."

The Caſe of *Auſtrey*, though very correctly (I believe) reported, might probably miſlead the Juſtices; by their not attending to the Circumſtances of the particular Caſe, to which the general Words there made Uſe of were to be applied: They ſeem to have underſtood them in their abſolute and general Senſe, without conſidering their particular Application to the Caſe then under Conſideration; which was the Caſe of a *Pariſh*-Apprentice, where the Pariſh and the Public are intereſted. The Child was legally bound out by the Pariſh-Officers till he ſhould be 24: And the Indenture was duly approved by two Juſtices. The Maſter, in Conſideration of 40 Shillings paid to him by the Apprentice, agreed to diſcharge him; and delivered up the Indenture to the Apprentice. The Queſtion was, "Whether the *Pariſh-Officers*, who bound "him out under a ſpecial Authority, ought not to have been conſulted about diſcharging him, and to have given their Conſent "to it." The whole Policy of the 43d of *Elizabeth* * might be defeated, if the Maſter and Pariſh-Infant Apprentice could by their joint-Conſent *alone*, without the Conſent of the *Pariſh-Officers* diſcharge ſuch a Contract, and ſet the Apprentice free from it. Such a Conſtruction would evade and invalidate this Law. That Caſe, therefore, is not applicable to the preſent. Here, the original Contract was only between the Father, the Maſter,

* v. 43 Eliz. c. 2. § 5.

WEDDINGTON *and* CHILVERS COTON.

Maſter, and the Apprentice: and *all* of them conſent to the Diſcharge.

An Infant may make his Condition *better*; though he can't make it worſe. The Reaſon why an Infant may bind himſelf Apprentice is, becauſe it is for his Benefit.

If he was diſcharged of the former Indenture, he was at Liberty to execute another.

The Caſe of *St. Mary Kallendar's* is in Point: I ſee no Diſtinction that can be made between it and the preſent Caſe. The Indentures were exchanged between the Father and the Maſter, by Conſent of the Apprentice, who was clearly then under Age. And Lord Ch. J. *Lee* ſays—"The Indentures did not ſubſiſt; becauſe "the *Exchange* of the Indentures amounted to a Cancelling of them, "and a *Determination* of the Apprenticeſhip under them."

Mr. Juſtice ASTON was abſent.

Mr. Juſtice WILLES and Mr. Juſtice ASHHURST concurred with LORD MANSFIELD.

RULE made ABSOLUTE:
BOTH ORDERS QUASHED.

See the ſeveral Caſes referred to at the Bottom of pa. 16. and particularly No. 180. *Poſt.* No. 249.

No. 240. Rex *v.* Inhabitants of Tamworth.

Wedneſday May 11th 1774.

A *Certificate* will not bind the Pariſh granting it, unleſs it be under the *Hands* and *Seals* of a MAJORITY of the *Churchwardens* and *Overſeers*: And no *Fraud* can be preſumed, where none is ſtated.

TWO Juſtices of the Peace for the City of *Coventry* made an Order for removing *Samſon Watkins* from *St. Michael's* Pariſh in *Coventry* to the Pariſh of *Tamworth* in *Staffordſhire*. They appealed to the Quarter-Seſſions of the Peace for the City of *Coventry* and County of the ſame City; who confirmed the ſaid original Order; ſtating the following Caſe—

It appeared, that *Samuel Watkins*, the Father of the Pauper, went from *St. Michael's* in the Year 1727, to reſide in *Tamworth*; and brought with him a Paper-Writing purporting to be a Certificate under the Hands and Seals of *Thomas Dogley* and *John Hollyer*, Churchwardens, and *Daniel Gill* and *Samuel Edwards*, Overſeers of the Poor, of the ſaid Pariſh of *St. Michael's*, and allowed by *Abraham Owen* and *Henry Cockram*, then two of his

Majeſty's Juſtices of the Peace for the City and County of the City of *Coventry:* Which Paper-Writing is in the Words and Figures following, to wit—" To the Churchwardens and Over- " ſeers of the Poor of the Pariſh of *Tamworth* in the County of " *Stafford*, &c.; We the Churchwardens and Overſeers of the " Poor of the Pariſh of *St. Michael* in the City of *Coventry*, do " hereby own and acknowledge *Samuel Watkins* and Family to be " Inhabitants legally ſettled in our ſaid Pariſh of *St. Michael*; and " that we will own them as ſuch, at any Time or Times here- " after. In Witneſs whereof, we have hereunto ſet our Hands " and Seals, the 16th Day of *May* in the Year of our Lord 1727. " *Thomas Dagley.* O *John Hollyer* O Churchwardens. *John* " *Gill* O *Samuel Edwards* O Overſeers." Atteſted by *Ralph Whitehead*, *John Bryan*; and allowed by us whoſe Names are underwritten, being two of his Majeſty's Juſtices of the Peace for the City and County of the City of *Coventry*—*Abraham Owen*, Mayor; *Henry Cockram.*

TAMWORTH and ST. MICHAEL'S.

That the ſaid *Samuel Watkins* continued to reſide in the ſaid Pariſh of *Tamworth*; and about the Year 1740, had a Son born in the ſame Pariſh, to wit, *Sampſon Watkins*, the preſent Pauper.

That in the Year 1757, the Pauper was legally bound Apprentice to *John Hunter* in the ſaid Pariſh of *Tamworth*, for five Years; and ſerved him the whole Time, under the ſaid Indenture, in the ſame Pariſh.

That the ſaid *Samuel Watkins*, the Father, about ten Years ago, came back to the ſaid Pariſh of *St. Michael:* And in *May* laſt, the Pauper *Sampſon Watkins* came into the ſaid Pariſh of *St. Michael*, and reſided there with his ſaid Father; and being actually chargeable to the ſaid Pariſh of *St. Michael*, was removed the 31ſt Day of *Auguſt* laſt, by the Order of Removal herein before ſtated, to the Pariſh and Borough of *Tamworth* aforeſaid: From which Order the ſaid Pariſh and Borough of *Tamworth* appealed to this Court, being the next general Quarter-Seſſions held for the ſaid City of *Coventry*. Upon which Appeal, the *Veſtry-Books* of the ſaid Pariſh of *St. Michael* were produced by the Veſtry-Clerk of the ſaid Pariſh: In one of which Books are the following Entries, to wit, *April* 3d 1727. " At a Veſtry then aſſembled, for the " Choice of *Churchwardens* for this Year 1727, there was elected " and choſen the ſeveral Perſons underwritten, *viz.*

" *Goſford*

TAMWORTH and ST. MICHAEL'S.

" *Gosford-Street Ward.* 1. " Mr. *John Ame.*
" *Much-Park Street Ward.* 2. " Mr. *Robert Bunny.*
" *Bayley-Lane Ward.* 3. " Mr. *John Hollyer.*
" *Earl-Street Ward.* 4. " Mr. *Thomas Dagley.*
" *Broadgate Ward.* 5. " Mr. *John Boyse.*
" *Spon-Street Ward.* 6. " Mr. *William Bellison.*

" *Thomas Edwards, Vicar.*

" *William Lindopp.*
" *William Crump.*
" *John Smith.*
" *Thomas Lucas.*
" *Henry Smith.*
" *Thomas Lowe.*

Churchwardens.

" *Edward Gravenor.*
" *William Westley.*
" *William Denham.*
" *George Mason.*
" *Richard Brockhurst.*
" *John Thacker.*
" *William Ratten.*
" *Thomas Watkin.*
" *Timothy Bird.*
" *Joseph Smith.*
" *Charles Millward.*

" *Francis Ryley.*
" *Robert Richards.*
" *John Gooch.*

" *April* 9th 1727. The *Goods*, *Plate*, and all other Things be-
" longing to the Church, with the Books particularly mentioned
" in a Catalogue in this Book, and which are therein noted,
" were *delivered* to the present Churchwardens, the Day and
" Year above written."

" *John Ame.*
" *William Bellison.*
" *Robert Bunny* his ⋈ Mark.
" *John Hollyer.*
" *Thomas Dagley.*
" *John Boyce.*"

And parol Evidence was likewise given, " that for *sixty* Years
" back and upwards, it has been the *constant Usage*, for the Parish
" of *St. Michael* to have SIX *Churchwardens* and *four* Overseers of
" the Poor for the said Parish."

That no parol Evidence was given, of any particular Number of Churchwardens and Overseers IN the Year 1727: But that it appears from various Entries in the said Vestry-Books, " that
" there has been a *uniform and constant Usage* in the said Parish of
" *St. Michael*, from the Year 1566 to the present Time, to *elect*
" *annually* SIX *Churchwardens* for the said Parish." And that the Pauper's

Pauper's Father never gained any Settlement in the ſaid Pariſh of *Tamworth*. TAMWORTH and ST. MICHAEL'S.

And the Court [of Seſſions] being of Opinion, upon hearing the above Evidence, "that there *were ſix Churchwardens* and *four* "Overſeers of the Poor for the ſaid Pariſh of *St. Michael*, in and "for the Year 1727; and that the ſaid Paper-Writing *purporting* "*to be a Certificate*, and *executed* ONLY BY FOUR *of the ſaid Pa-* "*riſh Officers*, was NOT a valid Certificate," *therefore* confirmed the Order of the ſaid two Juſtices.

On *Monday* the 7th of *February* 1774, Mr. *Wilſon* moved to quaſh both theſe Orders; for that the Juſtices had made an erroneous Determination, in holding this Certificate *not* to be a valid one: Whereas it really was a valid and ſufficient one, he ſaid; and within the Deſcription of 8 *W.* 3. *c.* 30. Sect. 1.

Mr. *Wallace* and Mr. *Wheeler* now ſhewed Cauſe againſt quaſhing the Orders. They alledged the Certificate to be invalid, inſufficient, and *not* within the Deſcription of 8 *W.* 3. *c.* 30. § 1. Which is expreſs "that it muſt be under the Hands and Seals of "the Churchwardens and Overſeers, *or the major Part of them.*" Now here were *ten*; and *only four* have ſigned and ſealed this Certificate. The conſtant Uſage of this Pariſh has been, to have ſix Churchwardens and four Overſeers. None of the ten appear to have been dead; nor is it to be preſumed that their Number was reduced to ſeven, between the 19th of *April* (when the Church-Plate, *&c.* was delivered to them,) and the 16th of *May*, when theſe four executed the Certificate. Such a Certificate could not, therefore, bind the Pariſh of *St. Michael*. Conſequently, the Settlement of this Pauper is in *Tamworth*, where he ſerved his regular Apprenticeſhip.

Mr. *Mansfield*, on the contrary, argued for quaſhing the Orders. This Certificate, dated 47 Years ago, is regular in the Form and upon the Face of it; and is allowed by two Juſtices of the City of *Coventry*; and was completely proved. *Tamworth* could not know, nor had any Reaſon to ſuſpect, that four were not a Majority of the whole Number: Nor indeed is it clear that there were ten elected and ſworn and actually in Office in the Year 1727; or alive at the Time when the Certificate was ſigned and ſealed. And if in Fact theſe four were not the major Part, it was a groſs Fraud and Impoſition upon *Tamworth*.

LORD MANSFIELD was not now in Court.

Tamworth and St. Michael's.

The other three Judges thought it a hard Case upon *Tamworth:* but they held themselves to be bound down by positive Law. The Statute is express and positive, "that the Certificate "must be under the Hands and Seals of the Churchwardens and "Overseers, or the *major Part of them.*"

And as to *Fraud*, the court can't presume Fraud, if it be not found: And here none is stated; (though Mr. Justice Ashhurst thought the Justices might have considered it as a Fraud.)

Neither could the Court presume the Death of any of them, between the 9th of *April* and the 16th of *May*.

Mr. Justice Aston mentioned a Case (*ante*, pa. 581. No. 187.) of *Wooton St. Lawrence*, where the Court agreed "that a "Certificate cannot conclude the Parish that gives it; unless it be "pursuant to this Act of Parliament."

The Court therefore discharged the Rule, and affirmed the Orders.

No. 241. Rex v. Inhabitants of Bath Easton.

Monday 16th May 1774.

The Settlement of a *Servant* is in the Parish where he *serves* the last 40 Days; and does not depend upon the Settlement of his *Master*.

Two Justices made an Order for the Removal of *Thomas King* from *Enborne* in *Berkshire* to *Bath Easton* in *Somersetshire*: Which Order was, upon an Appeal, confirmed by the Sessions.

The special Case stated upon the Order of Sessions was as follows—

The said *Thomas King*, about the latter End of *August* or Beginning of *September* 1763, was hired as a Covenant-Servant, for a Year, to the reverend Mr. *William Robinson*; who then resided at *Bath Easton* aforesaid. He accordingly entered upon the said Service, and served, the said Year and some Months over. About the latter End of *April* or Beginning of *May* 1764, the said Mr. *Robinson* went to *Exmouth*, with his Wife and Family, to *bathe* there; and the said *Thomas King* went with them; where they staid till *Michaelmas* following. Upon their coming to *Exmouth*, the said Mr. *Robinson* hired an House for *three Months*: During the whole of which Time, the said *Thomas King* was with him there. Mr. *Robinson*

binſon then hired another Houſe, for *two Months*; being obliged to quit the former, on Account of it's being engaged to ſome other Family for three Months. During the latter two Months, the ſaid Mr. *Robinſon* was once abſent from *Exmouth* a Fortnight, or three Weeks at moſt. He returned to *Exmouth*; and diſcharged the ſaid *Thomas King* there. BATH EASTON *and* ENBORNE.

And it likewiſe appeared to the Court, upon the Examination of Mrs. *Sheppard* who lived in the ſame Service with the ſaid *Thomas King*, that *Exmouth* was a Place reſorted to *for Bathing*; and that her Maſter and Miſtreſs, the ſaid Mr. *Robinſon* and his Wife, did bathe there: And being aſked as to the Nature of the Place, "What Company there might be there," and "whether "ſhe heard of any Balls and Aſſemblies there," ſaid, "that ſhe "attended her own Buſineſs, and therefore could give no Account "of it; that there were *but one or two* Families there during the "whole Time her Maſter and Family were there"; and "that ſhe "did not know of any Balls or Aſſemblies."

James Pettit Andrews Eſq; (another Witneſs) ſaid "that ſome "Time about the Year 1763 or 1764, he went with his Brother "and a Party upon a Tour into *Devonſhire*, and went to *Exmouth*; "that it was a Place where *Company went to bathe*, and where "there were *Balls* and *Aſſemblies*; and that he conſidered it in "the *Nature* of *Brigthelmſtone*."

Bernard Brocas Eſq; (another Witneſs) ſaid "that he himſelf "never was at *Exmouth*; but that he has frequently heard it "ſpoken of as a Place of *public Reſort*; and that he knew of ſe-"veral Families going to it in *that* Light."

The Seſſions confirm the Order; and further order, by Conſent of the Counſel and Attornies on both Sides, "that the ſaid Order "of Confirmation, together with the Merits of the ſaid Appeal, "be referred to the Judgment of his Majeſty's Court of King's "Bench at *Weſtminſter*, on the above State of the Facts."

Mr. *Vanſittart* moved, on *Friday* the 30th of *April* 1773, to quaſh theſe Orders; and on *Thurſday* the 13th of *May* following, Mr. *Bearcroft* was to have ſhewn Cauſe againſt it. But Mr. *Bearcroft* objected, that the Caſe was not fully ſtated. The material Queſtion, he ſaid, was "whether *Exmouth* is a public Place, "or not": And nothing is here ſtated, but the mere *Evidence*. Neither is the Rent of the Houſe which the Maſter took at *Exmouth*, nor the Value of it ſtated. It was, in Fact, he ſaid, a ready-furniſhed Lodging-houſe only; and the Owner lived in

BATH EASTON and ENBORNE. it. However, upon the preſent imperfect State of the Caſe, it muſt be taken that *Exmouth* is a public Place: And the Maſter was there occaſionally only, and not as his Reſidence. The Servant did not therefore gain any Settlement there; but his Settlement at *Bath Eaſton* remained. The only Caſe like this, he ſaid, was that of the King and the Inhabitants of *Alton* (*ante*, pa. 418. No. 134.)

LORD MANSFIELD and Mr. Juſtice ASTON told him, that that Caſe went upon very particular Circumſtances; and the Servant was born under a Certificate too.

However, they agreed with him, that the preſent Caſe was incompletely ſtated; and that it had better be ſent back, to be ſtated more particularly.

It was, accordingly, ſent back, to be RE-STATED.

It was afterwards returned up again, re-ſtated as follows—*viz.*

The Pauper, about the latter End of *Auguſt* or Beginning of *September* 1763, was hired, as a Covenant-Servant, *for a Year*, to the reverend Mr. *William Robinſon*, who then reſided at his Houſe at *Bath Eaſton*, as his *only* Place of *general* Reſidence. He accordingly entered upon the ſaid Service; and ſerved the ſaid Year and ſome Months. He ſerved the firſt Part of the ſaid Year at *Bath Eaſton:* But, about the latter End of *April* or Beginning of *May* 1764, he attended the ſaid Mr. *Robinſon* with the reſt of his Family to EXMOUTH, where Mr. *Robinſon* went for *Sea-bathing*, and that his Child (who was ill) might alſo uſe the *Sea-bathing* at that Place; where the ſaid Mr. *Robinſon hired by the Week*, at *fourteen or fifteen Shillings by the Week*, the *whole of a ſmall Lodging-houſe* which belonged to an Inn-Keeper who kept it *ready furniſhed*, ſolely for the Purpoſe of letting it to Strangers; in which he ſtaid for the Space of *ten Weeks*; during the whole of which Time, the ſaid Pauper ſerved him there. Mr. *Robinſon* then hired, *by the Week*, *Lodgings* in another Houſe in *Exmouth*; being obliged to quit the former on Account of its being engaged to a Lady and her Niece from *London*, who came to *Exmouth* for the ſame Purpoſe of Sea-bathing. He ſtaid at the laſt mentioned Lodgings, and the Pauper with him, for the Space of two Months, except

except an Abſence of about three Weeks on an Excurſion into *Kent*, where the Pauper attended him: After which, he returned to *Exmouth*, and the Pauper with him; who continued in his Service at *Exmouth*, till his Maſter DISCHARGED him, *juſt before* his leaving that Place and returning to his ſaid Reſidence at *Bath-Eaſton*; which was when he gave up the Lodging laſt mentioned, at the Expiration of the ſaid Space of two Months. BATH EASTON and EXBORNE.

That EXMOUTH was a *Place generally reſorted to* by Perſons from *Exeter* and *London*, for *Sea-bathing*: But that Merchants did alſo reſort to it from *Exeter*, as to a *Village*; juſt as Merchants from *London* reſort to *Greenwich* or *Hampſtead*.

That it was in the *Nature of* BRIGHTHELMSTONE; but of *inferior Eſtimation*.

That *no Phyſician* reſided at *Exmouth*, or nearer than *Exeter*, which is ten Miles diſtant: But that the *bathing Accommodations* were *extremely good*.

That there were BALLS there, and a CARD-ASSEMBLY once a Fortnight.

That the Pauper gained *no Settlement after his Diſcharge* as aforeſaid.

It is ordered by the Court [of Seſſions] that the ſaid Order of the ſaid two Juſtices be, and the ſame is hereby confirmed.

And it is further ordered by this Court [the Seſſions] by and with the Conſent of the Counſel and Attornies on both Sides, that this preſent Order of Confirmation, together with the Merits of the ſaid Appeal be, and the ſame are hereby referred to the Judgment of his Majeſty's Court of King's Bench at *Weſtminſter*, on the above State of the Facts.

On *Tueſday* 8th *February* 1774, Mr. *Davenport* moved to quaſh this re-ſtated Order of Seſſions and the original Order which ſtood confirmed by it; and had a Rule to ſhew Cauſe.

On *Monday* 16th *May* 1774, Mr. *Bearcroft* and Mr. *Harding* endeavoured to ſhew that the Pauper's Settlement was at *Bath-Eaſton*, which was his Maſter's only Place of general Reſidence; and not at *Exmouth*, which now appears to be a public Place of Reſort for Sea-bathing, and where the Maſter was only a caſual Reſident, a mere Sojourner, his Domicil being at *Bath-Eaſton*. They relied on the *Alton*-Caſe, as laying down a *general* Rule excluſive of and unconnected with the particular Circumſtances of that Caſe, "that if a Maſter goes "to a public Place, and reſides there as a Sojourner forty Days, "having

BATH EASTON *and* ENBORNE.

" having a Domicil elsewhere, his Servant who attends him thither shall not gain a Settlement at such public Place, by serving " him 40 Days in his casual Residence there." [*v. ante*, pa. 421.] And they said, that the same Idea was recognized in the Case of *East Ilsley*: (Which Case *v. ante*, No. 223. pa. 723.)

Mr. *Wallace*, who was Counsel for *Bath Easton*, argued for quashing the Orders; and to shew that the Pauper's Settlement was at *Exmouth*, where he served the last forty Days. He denied that any such general Rule was laid down in the *Alton*-Case, as had been suggested. That Case turned upon particular Circumstances: It was never laid down generally, " that a Servant could " not gain a Settlement by serving his Master at *Scarborough* or " any other public Place." Here are none of the Circumstances upon which the Court laid particular Stress in that Case. Here is no Continuation of the original Hiring; no Return of the Master to his former Home; no Re-hiring; no Certificate. The Master went, with his whole Family, to *Exmouth*: It is not material how, or for what Purpose, he went thither. The Servant attended him thither; served him there forty Days; and finished his Service there.

LORD MANSFIELD and Mr. Justice ASTON said, there was a manifest Distinction between the present Case and that of *Alton*. Here, the Service ended at *Exmouth*: In the other Case, it was continued; and was renewed at *Elvetham*, and the last forty Days were served at *Elvetham*. There, the Servant was a Certificate-Man from *Alton* to *Elvetham*, when he was hired by Sir *Harry Calthorpe* at *Elvetham*. That Case was considered as a Continuation of the Service at *Elvetham*: This is no Continuation of the Service at *Bath-Easton*. And LORD MANSFIELD mentioned, that in that Case, he laid great Stress upon the Contract not being finished at *Scarborough*, but continued over; and also upon the Servant's being re-hired at *Elvetham*, and serving there seven Years; and likewise upon his being under a Certificate from *Alton*, when originally hired. So that *Scarborough*'s being a Watering-place was far from being the *sole* Ground of that Resolution. However, we will think of it: There should be Certainty established in Cases of this Sort. And Mr. Justice ASTON observed, that the Settlement of the Servant does not depend upon the Settlement of the Master: It is the last forty Days Service, that gains a Settlement to the Servant, in the Place where it is performed. Here, the last forty Days Service was performed at *Exmouth*: And the Service ended there. Therefore he gained a Settlement at *Exmouth*.

To

BATH EASTON and ENSORNE.

To prove "that the laſt forty Days Service gains the Settlement," he cited the Caſes of *St. Peter's Oxford* and *Fawley-Court*, (*v. ante*, pa. 180. and pa. 422.) and *Silverton* and *Aſhton*, which (with ſome other like Caſes) may be ſeen in the *Ladock* Caſe, *ante*, pa. 180. *. And he did not ſee any Hardſhip upon public Places, if after getting a great Deal of Money by Perſons coming to reſide at them, they ſhould ſometimes be charged with a Servant who had gained a Settlement by ſerving a Maſter who had hired a Houſe there: The Benefit they receive from the Maſters more than balances the Inconveniences likely to ariſe from the accidental Settlement of the Servant. And if Servants do gain a Settlement by ſerving forty Days there, yet they generally remain forty Days longer in the Service of their Maſters, in the Pariſhes where their Maſters are uſually reſident in their ordinary Courſe of Life. So that this Incumbrance upon public Places does not happen ſo frequently as might perhaps be imagined; nor is, upon the whole, at all injurious to them.

*See alſo Mr. Bott's Collection, p. 296, 297.

Mr. Juſtice WILLES thought that though all the Circumſtances of the *Alton* Caſe did not indeed occur in the preſent Caſe; and though ſeveral other Reaſons were given in Support of that Reſolution; yet the general Doctrine that had been mentioned ſeemed to be plainly laid down in that Caſe; and appeared to him to be founded in good Reaſon: For, it would be very hard upon public Places of Reſort, if they ſhould be obliged to maintain all the Servants of Perſons who had come thither for Health or Amuſement, and ſtayed there 40 Days. The Caſe of *Silverton* and *Aſhton* was not a caſual Reſidence of the Maſter: He had removed from *Aſhton* to *Patchel*, and had lived there ſix months. In the Caſe of *Iſley*, the Rule that has been mentioned ſeemed to be recognized: And when the preſent Caſe was ſent down to be reſtated, it ſeemed to be underſtood that if *Exmouth* ſhould come out to be a Place of public Reſort, like *Scarborough*, this Caſe would then be within the Reaſon of the *Alton* Caſe.

Mr. Juſtice ASHHURST thought, with Mr. Juſtice ASTON, that it was reaſonable that public Places, which profit greatly by the Reſort of Company coming to them for Health or Pleaſure, ſhould bear their Share in the Burden of ſupporting the Servants who have attended them there long enough to gain a Settlement. He alſo noted a material Difference between the preſent Caſe and that of *Alton*; where the Servant did not ſerve the laſt forty Days in *Scarborough*, but went back with his Maſter to *Elvetham*, was

BATH EASTON and ENBORNE.

re-hired there for a third Year, ſerved it out at *Elvetham*, and continued in his Maſter's Service there for ſeven Years more: Whereas the laſt forty Days of the Service now under Conſideration were at *Exmouth*, where the Servant was diſcharged, and never returned to *Bath Eaſton*. He inclined, therefore, at preſent, to think that his Settlement was at *Exmouth*.

THE COURT took Time to adviſe.

And on *Wedneſday* 22d *June* 1774,

LORD MANSFIELD delivered their unanimous Opinion "that the Pauper's Settlement was at *Exmouth*."

This is a common Hiring for a Year: There is nothing particular in it. And in the Caſe of a common Hiring for a Year, a Service with the Maſter for a Year gains a Settlement to the Servant in the Place when the *laſt forty Days* of ſuch Service were performed. Here, the Service with the Maſter for the laſt forty Days *ended at Exmouth*: There was no Continuance of Service with the Maſter, after the Maſter's Return to *Bath-Eaſton*.

In the *Alton* Caſe, there were many particular Circumſtances. The Servant was born at *Elvetham*, under a *Certificate* from *Alton*; and could not gain a Settlement there, by his *original* Hiring and Service in that Place; nor without a *Diſcontinuance* of it, and a *new* ſubſequent Hiring. But no ſuch Diſcontinuance ever happened in that Caſe: The Service did *not* end at *Scarborough*; it *continued*. The Servant at *Scarborough*, propoſed a new Agreement for another Year. His Maſter ſaid "it would be Time enough, when they returned home to *Elvetham*." Whereupon, the Servant *continued* on, for about ſix Weeks, *until they returned to Elvetham*; when he was again hired by his Maſter for a third Year, and ſerved it out at *Elvetham*, and continued in his Maſter's Service for ſeven Years more, in *Elvetham* *. So that it was a *Continuation* of the original Hiring: The Contract did not end at *Scarborough*. The Queſtion therefore, in that Caſe, was "Whether ſerving his Maſter who reſided at *Scarborough* as a Sojourner, for above forty Days, ſhould gain the Servant a Settlement "*there*, when his former Hiring at *Elvetham* was *not diſcontinued* "nor ended at *Scarborough*, but (on the contrary) continued and "went on until and after their Return to the Maſter's general Reſidence at *Elvetham*."

* v. ante, pages 419, 421, 424.

But that Caſe does not lay it down *generally*, "that no Servants can gain Settlements at Places where People go to drink "Waters, though they ſerve their Maſters or Miſtreſſes there for "forty

" forty Days." If it does, it is wrong: For, no such general Rule ought to be laid down.

BATH EASTON and EBBORNE.

We are all of Opinion, that this Servant, who went with his Master to this Place, and served him there for the *last forty Days* of his Service, which *ended* at this Place, and was not at all continued at any further Time or Place, is legally settled there, by serving the last forty Days at it.

Mr. Justice WILLES strongly delared his Assent to this Opinion; and added, that he hoped it would now be understood " that " serving a Master forty Days at a public Place gains the Servant " a Settlement at that public Place."

BY THE COURT, unanimously,

THE RULE for QUASHING BOTH ORDERS was made ABSOLUTE.

Trinity Term

14 Geo. 3. 1774.

No. 242. Rex *v.* Inhabitants of Chirk.

Monday 6th June 1774.

Apprenticeſhip determined, by the Death of the Maſter.

TWO Juſtices removed *Anne Harry*, Widow, and her ſeven Children, (particularizing their Names and Ages) from *Wrexham* in *Denbighſhire* to *Chirk* in the ſame County; And the Seſſions, upon an Appeal, confirmed their Order.

The Caſe was agreed to be—That *John Harry* of *Wrexham*, Slater, (who was Father to *George* who married *Anne Harry*,) was bound an Apprentice, by Indentures, for three Years, without any Conſideration, to *Thomas Tamerlaine* of *Wrexham*, Slater. That he *ſerved under the ſaid Indenture for nine Months:* Then his Maſter died. That he continued a Fortnight with the Widow, to complete the Work unfiniſhed by his Maſter. That then, the Miſtreſs having no Employment for him or any other Workmen, ſaid, "he muſt not ſtay with her, and that he was *at Liberty to "go where he thought proper*;" and that he and the other Workmen quitted her: But he apprehended, that his Miſtreſs had a Right to call him back, to finiſh his Apprenticeſhip. That on parting with her, he told his ſaid Miſtreſs "that he was going to his "Father, who was a Slater." That there was no particular Agreement between his Father and his Miſtreſs, to his Knowledge; nor the Indentures delivered up. That his Father lived in the Pariſh of *Chirk:* And that he continued with him for two or three Years.

On

CHIRK and WREXHAM.

On *Saturday* the 30th of *April* 1774, Mr. *Willes* moved to quaſh both theſe Orders: And Mr. *Kenyon* now ſhewed Cauſe againſt it. Mr. *Thomas Cowper* argued in Support of the Motion.

THE COURT held the Settlement to be in *Wrexham*; and made the Rule abſolute, for quaſhing the Orders. They thought, it ſufficiently appeared that the Pauper ſerved forty Days as an Apprentice, *in Wrexham*; and that his Settlement remained there. The Widow does not appear to have had any Intereſt: No Adminiſtration appears to have been taken out.

BOTH ORDERS QUASHED.

V. *ante*, No. 43. and the Note at the End of it, pa. 135. See alſo *ante*, No. 114. S. P.

Rex *v.* Inhabitants of Painſwick. No. 243.

Thurſday 16th June 1774.

TWO Juſtices removed *Jane Skinner*, Widow, and her two Children *Mary* and *William* (aged eight and ſix reſpectively) from *Southſtoke* in the County of *Somerſet* to *Painſwick* in the County of *Glouceſter*: And the Seſſions confirmed their Order; ſtating the Caſe ſpecially.

A mere *Right* of Dower, without an *Aſſignment*, will gain the *Widow* a Settlement. But ſuch Settlement will not communicate itſelf to a *ſecond* Huſband.

The ſpecial Caſe ſtated upon the Order of Seſſions—

James Atwood, the *firſt Huſband* of the Pauper *Jane Skinner*, died about ſixteen Years ago, *ſeiſed of a Houſe and Orchard* in *South Stock*; * leaving the ſaid *Jane* his Widow, and *John Atwood* his Son and Heir by a former Wife, who was then and now is a Soldier in the Guards. The ſaid *Jane*, upon the ſaid *James Atwood's* Death, put the ſaid Houſe in Repair, and entered upon the ſame Houſe and Orchard; not hearing that any one had a better Right than herſelf: Nor did ſhe know whether the ſaid *John Atwood* was dead or living. The ſaid *Jane* lived in the ſaid Houſe for about ſeven Years after the ſaid *James Atwood's* Death; and then *intermarried with William Skinner*, who was ſettled in *Painſwick*. The ſaid *William Skinner* reſided with his ſaid Wife in the ſaid Houſe till his Death, which happened about two Years afterwards; and left, by her, the two other Paupers, his Children. Afterwards, after his Deceaſe, the ſaid *Jane* lived in the ſaid

* *Stoke v.* Villare Anglicum.

PAINSWICK *and* SOUTHSTOKE

House, till about three Quarters of a Year ago. She paid one Shilling Quit-Rent. The ſaid *John Atwood*, the Son, claimed the Premiſſes, about four Years after his Father's Death; and again, about ſeven Years ago; and on *Saturday* before the Seſſions, ſold his Intereſt therein, the Houſe being fallen down, for 40 *l.* ſixpence whereof was paid in Earneſt.

H. Hobbhouſe, for Appellants:
A. Moyſey, for Reſpondents.

On *Wedneſday* 4th *May* 1774, Mr. *Morris* moved to quaſh theſe Orders; alledging that the legal Settlement of the Paupers was in *South Stock:* For, the Wife of *James Atwood* had a *Right of Dower* in the Tenements whereof he died ſeiſed; and her ſecond Huſband, by his reſiding with her thereupon, gained a Settlement for himſelf, and communicated ſuch his Settlement to his two Children, the other two Paupers.

On *Monday* 6th *June* 1774, Mr. *Moyſey* and Mr. *Dunning* ſhewed Cauſe. *A Right to Dower* was no Eſtate at all, they ſaid; nor was it like an equitable Eſtate: It was like a Title to an Action. It is true, that by *Magna Charta*, * the Widow had a Right to remain 40 Days in the Houſe. But that Right of remaining 40 Days could not give a Settlement to a ſecond Huſband whom ſhe married ſeven Years afterwards, and to his Children by her. Nothing could do that, but a *continuing* Right.

* c. 7.

Mr. *Thomas Gould* and Mr. *Morris* argued in Support of the Rule. This Widow had, by *Magna Charta*, a Right to remain forty Days in the Houſe: She could not be removed during that Time. And whoever is irremoveable for forty Days gains a Settlement. She was not an Object of the Act of Parliament for removing Vagrants likely to become chargeable: It was her own, and ſhe could not be removed from it. And her Huſband, if ſhe married, would have the ſame Right. It would be hard, to put her to a Writ of Dower. Here was an Acquieſcence of many Years: No one claimed. She entered, repaired, and paid the Quit-Rent.

THE COURT were of Opinion that this *mere* RIGHT of Dower was not ſufficient to gain a Settlement in *South Stock* for her *ſecond Huſband* and the *Children* ſhe had by him.

RULE DISCHARGED; and the ORDERS AFFIRMED.

Note—

Note—

LORD MANSFIELD, upon this 16th of *June*, mentioned what had paſſed upon the 6th and that this mere Right of Dower had been likened to the Caſe of a next of Kin, who can't acquire a Settlement *before* Adminiſtration granted; (according to the Caſes of *South Sidenham* and *Lamerton* *, and *Widworthy* and *Farringdon* †, and that of *Lower Swell* ‡.) But here, the Widow might (by *Magna Charta*) *remain forty Days*, and have Eſtovers; and if irremoveable 40 Days, would gain a Settlement: So that ſhe might have a Claim to have a Settlement for *herſelf* in *South Stock*. But, to be ſure, ſhe had no Capacity of communicating this Settlement to a *ſecond Huſband*.

PAINSWICK *and* SOUTHSTOKE

* v. ante, pa. 437.
† ante, pa. 109. No. 34.
‡ ante, pa. 436. No. 140. See alſo *ante*, No. 143. *Doug.* 609. S. P.

Mr. *Morris* obſerved, that he had gone ſo far as to argue, "that after her Quarentine, ſhe had a Capacity of communicating ſuch Settlement to a ſecond Huſband and her Children "by him."

Mr. Juſtice ASTON anſwered, that it was true that ſhe gained a Settlement for *herſelf*, if it was not a Caſtle, (as it could not be ſuppoſed to be:) but ſhe could *not communicate* it to her ſecond Huſband; as a Tenant in Dower has no Right to *enter* till Dower is aſſigned.

Mr. *Dunning* ſaid, they did not diſpute her having thereby gained a Settlement for *herſelf*: They only inſiſted, that ſhe *could not communicate* it to a ſecond Huſband and her Children by him.

THE COURT agreed with him, in both Points.

Rex *v.* Inhabitants of Wobourn. No. 244.

Tueſday 21ſt June 1774.

The Children of a *Certificate*-man may gain a Settlement in the Certificated Pariſh, by dwelling in a Cottage *there*, under a Will.

TWO Juſtices removed *Hannah Powell* and *Sarah Powell* from *Everſholt* to *Wobourn*, both in *Bedfordſhire*: And the Seſſions confirm their Order.

Special Caſe ſtated on the Order of Seſſions.—

William Powell, Father of the Paupers, in the Year 1731, came with a *Certificate* from the Pariſh of *Wobourn* to the Pariſh of *Everſholt*.

One *Andrew Lambert*, intitled to a long Term of Years in a *Cottage in Everſholt*, by Will dated 1748, deviſed as follows—

WOBURN and EVERSHOLT.

follows—" I give and bequeath to my Kinſman *William Powell's* " Son, named *Andrew Powell*, and his Heirs, all and whatſoever " I ſhall die poſſeſſed of; he paying certain Legacies herein men- " tioned. Alſo it is my Will and Pleaſure, that my Kinſman " *William Powell the elder, his Wife and* CHILDREN, SHALL HAVE " FREE LIBERTY AND POWER, DURING THEIR NATURAL " LIFE, *to* DWELL *in the ſame Houſe they now live in*"; (which was the Cottage abovementioned:) And the Teſtator appointed the ſaid *Andrew Powell* his ſole Executor.

The ſaid *Andrew Lambert* died in 1750: And the ſaid *Andrew Powell* proved his Will, in the ſame Year.

The ſaid *William Powell* and his Wife, and their Son *Andrew Powell, and their two Daughters, the Paupers*, from the Years 1750 to *February* laſt, the Time of his Death, RESIDED *in the ſaid Cottage.*

It appeared in Evidence, that about fourteen Years ago, the ſaid *William Powell* was *put into Poſſeſſion* of Part of a Barn and four Poles of Ground, in the Pariſh of *Everſholt*, by Warrant from the Sheriff, executed by *Thomas Hopkins* the Witneſs, who received a Guinea for his Trouble.

The ſaid *William Powell*, after Poſſeſſion ſo delivered to him as aforeſaid, let the ſaid Premiſſes at the Rent of five Shillings *per Annum*; and received the ſaid Rent; and cut down a Tree that ſtood upon the ſaid Ground, and ſold it.

This Court [the Seſſions] is of Opinion " that the Paupers have " *not*, by Reaſon of the Facts above ſtated, any Settlement in " *Everſholt*:" and they *confirmed* the Order.

On *Wedneſday* 8th *June* 1774, Mr. *Andrew Pemberton* moved to quaſh theſe Orders; inaſmuch as this Deviſe which gave the Paupers " *free Liberty and Power, during their natural Lives, to* " *dwell in the Houſe*," was a *Diſcharge of the Certificate*; and that they had gained a Settlement in *Everſholt*.

Mr. *Wallace* and Mr. *Whitchurch* now endeavoured to ſhew Cauſe in Support of the Orders. But

THE COURT were clear, that the Objection was unanſwerable; and that it was impoſſible to ſupport them.

RULE made ABSOLUTE:
BOTH ORDERS QUASHED.

Vide ante, No. 72, 75, 143, 149. *Doug.* 738. *accord.*

Rex *v.* Inhabitants of Warblington. No. 245.

Wedneſday 22d June 1774.

A Tenant muſt be *rated*, as well *as pay*, in order to gain a Settlement.

UPON an Appeal to the Seſſions, from an Order of two Juſtices made for the Removal of *William Freemantle* and *Elizabeth* his Wife from the Pariſh of *St. Olave* in *Chicheſter* to the Pariſh of *Warblington* in *Hampſhire*, the Juſtices were much divided in Opinion; but, after having ſtated the Caſe, confirmed the original Order, ſubject to the Opinion of this Court.

The ſpecial Caſe ſtated upon the Seſſions-Order—

William Freemantle, the Pauper, was certificated from the Pariſh of *Warblington* to the Pariſh of *Subdeanary*; and after living there ſome Time with his Father, he hired a Houſe and lived in the Pariſh of *St. Olave*. During the Time he lived in *St. Olave*, a Rate, dated the 27th of *April* 1773, was made for Repair of the Church of *St. Olave*, (which was produced and ſworn to by one of the Churchwardens of *St. Olave*,) in which Rate the ſaid *William Freemantle's* Name appeared in the following Manner, *viz.* "*William Freemantle to bring Security. L.* 0: 1: 6." Which ſaid *one Shilling and Sixpence* was *received* of the Pauper by the ſaid Churchwarden.

And it further appears, upon the Croſs-Examination of the ſaid Churchwarden, that ſaid Rate, when firſt made, was caſt up, and no Sum of Money was ſet againſt the Name of the ſaid Pauper; but that, afterwards, the Churchwarden, being continued in his Office for the next Year, met the Pauper, who told him "he "had got a Certificate from *Warblington* aforeſaid, and had de"livered it to the Guardians of the Poor-Houſe"; and thereupon the ſaid Churchwarden demanded and received of him the Sum of one Shilling and Sixpence; and afterwards, in the ſame Day, *figured* the ſaid Sum of one Shilling and Sixpence in the ſaid Rate of the 27th of *April* 1773: But finding that the Pauper had no ſuch Certificate, he applied to him, a few Days after, and offered to return the ſaid one Shilling and Sixpence; which the ſaid Pauper refuſed to accept.

The Counſel for the Appellants objected to the Croſs-Examination of the ſaid Churchwarden, as to the Matter tending to *invalidate the Rate* ſo far as it reſpected the taxing of the Pauper; and inſiſted, "that as the Rate was *proved by the ſaid Church*"*warden*, no Evidence FROM HIM ought to be admitted, *to in*"*validate*

WARBLINGTON and ST. OLAVE.

"*validate it*;" and "that a Payment being proved by him agreeable thereto, the Order ought to be quaſhed."

But the Court [the Seſſions] having over-ruled the Objection; and the Court [of Seſſions] being greatly divided on the Merits; the Order was confirmed, ſubject to the Opinion of the Court of King's Bench, on the above ſtated Caſe.

Mr. *Mansfield* moved (on *Thurſday* 9th *June* 1774) to quaſh theſe Orders. The legal Settlement appeared, he ſaid, to be in *St. Olave's*: This Man appears to have been charged and paid his Share towards the public Taxes or Levies of that Pariſh. His Name is in the Rate, with the Sum charged upon him: And it was received by the Churchwarden. And what is ſaid to have appeared upon the *Croſs-Examination* of the Churchwarden, was not legally proved: For, he was not a competent Witneſs to *diſcharge* his own Pariſh; being *intereſted* in the Matter he was to prove. He obtained a Rule to ſhew Cauſe.

Mr. *Dunning* and Mr. *Peckham* now ſhewed Cauſe. They denied that he had been *rated*. Paying alone is not ſufficient to gain a Settlement: The Perſon muſt be regularly and properly *rated*. This Man was *not* properly rated: The Rating muſt be *by the Pariſh*. This Man was not rated by the Pariſh: Quite the contrary. In the Rate made by the Pariſh, no Sum was ſet againſt his Name; and it was caſt up accordingly: And the Words "to bring Security," (which mean to bring or produce a "*Certificate*,") clearly ſhew that the Pariſh did not mean or intend to rate him. This being the Caſe, the Churchwarden had no Power or Authority to inſert theſe Figures oppoſite to his Name. The Rate was perfected: It was not competent to any one, to alter it. This Alteration made in it by the Churchwarden can not operate to the Prejudice of the Pariſh: Nor could the Man have been compelled to pay it. When the Churchwarden made this Alteration in the Rate for the Year 1773, he was Churchwarden for the Year 1774: And in that Character, he could have no Pretence of Power to alter the Rate for the preceding Year. And it was an Impoſition upon him, that occaſioned his doing it.

Mr. *Mansfield*, and Mr. *Kerby* (who was on the ſame Side with him,) anſwered to this latter Obſervation, that the Pariſh of *Warblington* had no Concern in any Fraud or Impoſition: It rather ſeemed, that *St. Olave's* meant to impoſe upon *them*. The Rule of rating ought to be the Circumſtances and Abilities of the Perſon to be rated: But, inſtead of that, the Pariſh of *St. Olave* only

only inquire " Whether he is a Certificated-Man, or not." And thinking him to be ſo, they have rated him, and demanded and received the Money. He appears upon the Rate, to be charged one and Sixpence towards it: And it would be hard, that when it has been demanded of him and paid by him, he ſhould be debarred of his Settlement. If a Poor's Rate be, in the Form and Manner of making it, not ſtrictly legal, but void; yet if a Perſon be aſſeſſed and pay to it, he ſhall gain a Settlement. *St. Giles's Cripplegate* and *St. Mary Newington*. *Bott.* 328. *Vinr.* Title " Settlement " of the Poor," 386. Letter K. *pl.* 9. This was a ſufficient Evidence of his Notoriety in the Pariſh. *Bott.* 335, 336. *Rex* v. *Stapleton:* (ante, No. 200.)

WARRINGTON and St. OLAVE.

THE COURT were unanimous that this Pauper was *not* properly *rated* to this Church-Rate for the Year 1773. It was neceſſary for him, both to be *rated*, and to *pay*; in order to gain a Settlement. This Rate was left in blank, during the whole Year 1773. *No Sum* was ſet againſt his Name: but marked " to bring " *Security*." It was caſt up, without any Charge upon him. No Demand was made upon him till 1774. This is not an informal Rate, or irregular, in the Manner of making it: It is *no Rate* at all. The Alteration, by inſerting a Sum, was not made till the following Year, by the Churchwarden of that following Year, without any Authority from the Pariſh, or Conſideration had by them concerning the Ability of the Perſon rated. The Orders can't be ſupported.

Note: Mr. *Kerby* made an Objection to the original Order of the two Juſtices; namely, That the Complaint appears to be " that the Paupers are likely to become chargeable to " the Pariſh of *St. Olave*, IF they ſhall continue there." Whereas they had no Authority to remove, without a poſitive Complaint " that the Paupers *are* likely to become " chargeable to the Pariſh that makes the Complaint." And he cited a Caſe from a Book intitled " Caſes and Reſolu- " tions of Caſes adjudged in the Court of King's Bench, " concerning Settlements and Removals *&c*", (commonly called Caſes of Settlements,) pa. 27. Caſe 39, where the Words are " Whereas *Margaret Weſt*, with her ſix Chil- " dren, has intruded *&c.* and *will become* chargeable, *if* per- " mitted to abide." *Branthwaite* ſaid that this is uncertain:

WARBLINGTON and ST. OLAVE.

It may be five or ten Years hence. Quaſhed. He alſo cited Dr. *Burn's* Juſtice of the Peace, Title "Poor, (Removal,") pa. 439, 440. in the 11th Edition.

LORD MANSFIELD anſwered him, that the *Adjudication* in the preſent Caſe is poſitive, and not liable to the Objection. It is a *poſitive Adjudication* "that they *are* likely to become "chargeable:" The Words are "We *do adjudge* them likely "to become chargeable to your ſaid Pariſh of *St. Olave.*"

Mr. *Kerby* ſaid, the Adjudication ought to *purſue the Complaint.*

Notwithſtanding this Objection, (concerning which, and the Anſwer to it, ſee 2 *Salk.* 491. between the Inhabitants of *Suddleſcomb* and *Burwaſh*, and ante No. 45. pa. 139. and the Caſe there mentioned, No. 12. pa. 43.)

THE RULE WAS DISCHARGED, and BOTH ORDERS AFFIRMED.

Vide poſt. No. 252. and the ſeveral Caſes there cited and referred to,

Michaelmas

Michaelmas Term

15 Geo. 3. 1774.

Rex *v.* Inhabitants of Empingham. No. 246.

Friday 25th Nov. 1774.

Hiring for a Year, with *Liberty of Abſence for* 11 *or* 12 *Days in the* SHEEP-SHEARING *Seaſon*, and for the Servant to have the Benefit of what he gets, *during that Time*, will *not* gain a Settlement.

TWO Juſtices removed *Joſeph Langton*, *Elizabeth* his Wife, and *Ann* and *Elizabeth* their Daughters, from *Fleckney* in *Leiceſterſhire* to *Empingham* in *Rutlandſhire*: And the Seſſions confirmed their Order; ſubject to the Opinion and Determination of this Court on the following Facts.

The Pauper was a *Shepherd*; and ſome ſhort Time before *Harborough-Fair* 1736, hired to *Henry Hubbard* of *Fleckney*, from that *Harborough-Fair* to the *Harborough-Fair* following, being one Year, at the Wages of three Pounds; *ſubject to a Liberty of being abſent* ELEVEN OR TWELVE DAYS *in the Sheep-ſhearing Seaſon*, and to have the *Benefit of what he got during that Time*.

He entered upon his ſaid Service at *Harborough-Fair* 1736, and ſerved the ſaid *Henry Hubbard* at *Fleckney* for above three Quarters of the Year.

He *went to ſhear Sheep*, in the *Seaſon*, (which was during that Space of Time,) for ABOUT ELEVEN DAYS; and ſerved the ſaid *Henry Hubbard* at *Empingham*, the *Remainder* of the Year.

He received to his *own Uſe* what was paid him for the *Sheep-ſhearing*, over and beſides his ſaid Wages of 3*l*.

One Day in the Seaſon, he aſked his Maſter to go a Sheep-ſhearing. His Maſter ſaid, "he was going out, and could not

EMPINGHAM and FLECKNEY.

"ſpare him that Day." And in Conſequence of that, he did *not* go.

The Pauper, during the Shearing-Seaſon, *returned frequently* to his Maſter's Houſe, and *did what Work was to be done*; and his Maſter found him his Board, as often as he returned home.

That it appeared to the Court (of Seſſions) that this was a Manner *not unuſual*, of hiring Shepherds, in that Part of the County.

Mr. *White* moved, on *Wedneſday* 22d *June* 1774, (the laſt Day of laſt Term,) to quaſh theſe Orders. He denied the Settlement of the Paupers to be in *Empingham*; as this was *not a Hiring for a Year*: For, it was Part of the *original Contract*, to except 11 or 12 Days out of it. He cited the Caſe of *Biſhop's Hatfield*, (*ante*, pa. 439. No. 141.) where a Hiring for a Year, "with Liberty to "let himſelf for the *Harveſt-Month* to any other Perſon," was holden to be only a Hiring for eleven Months. He had a Rule to ſhew Cauſe.

Mr. *Dayrell* now ſhewed Cauſe. He argued that this ought not to be conſidered as an Exception out of the original Contract; but upon the foot of a Leave of Abſence conſented to by the Maſter: And he inſiſted that the preſent Caſe was exactly like that of the *Militia-Man*, *ante*, pa. 753. No. 234. and not like that of *Biſhop's Hatfield*; nor within the Caſe of *Macclesfield* (*ante*, pa. 458. No. 146.) nor any of the other Caſes which turn upon Exceptions out of the original Contract. [See theſe Caſes all cited or referred to, in my Report of the Caſe of *St. Agnes*, *ante* pa. 671. No. 209. and at the End of the Abridgment of it in pa. 713, 714.]

Mr. *White*, on the contrary, inſiſted that this is clearly an *Exception* out of the original Contract, *at the Time of making it*; and therefore no Settlement can be gained under *ſuch* a Hiring. In Proof of which, he cited and relied upon two Caſes which I have already reported, in the former Continuation of theſe Deciſions: One of them was that of *St. Agnes*, pa. 671. No. 209. the other, that of *Buckland Denham*, pa. 694. No. 218.

THE COURT were unanimouſly of Opinion, that this was an *Exception out of the Contract*, at the *Time* of making it. They held it to be *Part of the Contract*: It is not to be conſidered upon the foot of *Leave* of Abſence *given* by the Maſter; who, being bound by the Contract, could not refuſe agreeing to it.

The

The Militia-Man's, they ſaid, was a particular Caſe: It was no more than the Law would have implied. And it was holden to be diſtinguiſhable from that of *Biſhop's Hatfield*. [*v. ante*, 753. to 756.] EMPINGHAM *and* FLECKNEY.

Note: This Rule was once made abſolute *without* Defence; (*viz.* on *Wedneſday* 9th *November* 1774:) But it was afterwards opened again, and defended as above.

RULE made ABSOLUTE: BOTH ORDERS QUASHED.

Rex *v.* Inhabitants of Natland. No. 247.

N. B. I inſert this Caſe, merely to notify that the Rule was diſcharged for a *collateral Reaſon*; not upon the Merits.

THE SESSIONS, upon an Appeal from an Order of two Juſtices made for the Removal of a Pauper-Family, of the Name of *Gibſon*, from the Townſhip of *Natland* in *Weſtmoreland* to that of *Stainton* in the ſame County, quaſhed it; but directed a Caſe to be drawn up, for the *Opinion of the Judge of Aſſiſe*; and agreed to be *determined by his Opinion*. Monday 28th Nov. 1774.

The *Opinion* of a Judge of Aſſize is *final*, on a Caſe referred to him, by *Conſent* of the Parties.

A Caſe was accordingly ſtated, and laid before the Judge of Aſſize. It was in the following Words; and received his Sentiments upon it, as is underwritten: *viz.*

In Support of the Order of Removal from *Natland* to *Stainton*, it was proved in Court, that the Pauper *Thomas Gibſon*, about fourteen Years ago, took to Farm, of Mr. *Wilſon*, a Tenement at *Barrow's Green* in the Townſhip of *Stainton* aforeſaid, at the yearly Rent of thirteen Pounds; and in purſuance of ſuch Taking, entered upon the ſaid Tenement, and reſided thereon for ten Years ſucceſſively. That in the laſt Year, the Pauper's Goods being diſtrained by Mr. *Wilſon* for Rent, he was reduced to Poverty, and thereupon quitted *Stainton* and returned to *Natland* with his Wife and Children; where they were permitted to reſide with her Mother (the widow of *Allan Court*) in Part of her Houſe in which

NATLAND and STAINTON.

ſhe then dwelt, which were Part of the Premiſſes deviſed to her during her chaſte Viduity, by her ſaid Huſband's Will. That ſhe had let to Farm the Reſidue of the Premiſſes: And that the Part wherein ſhe dwelt, was of the yearly Value of twenty Shillings. That the Pauper paid no Rent for this Houſe: For, his Wife's Mother helped to maintain him and his Family.

For the Appellants—The Probate-Copy of the Will of the ſaid *Allan Court*, dated the 17th Day of *March* 1738, was produced and read: Whereby he deviſed in the following Words, to wit, "It is my Will and Mind, and I do hereby give bequeath and "deviſe unto my loving Wife *Agnes*, for and during her chaſte "Viduity, all that my Meſſuage and Tenement with the Appur-"tenances ſituate lying and being at *Natland* in the County of "*Weſtmorland*, and commonly called or known by the Name of "*Bradſhaw Wives*; and from and after the Determination of the "chaſte Viduity of my ſaid loving Wife *Agnes*, I do hereby give "deviſe and bequeath the ſaid Meſſuage Tenement and Premiſſes "with the Rights Members and Appurtenances thereunto be-"longing, unto *Edward Shepherd* of *Natland* aforeſaid and ſaid "County of *Weſtmorland* Gentleman, and *Jonathan Williamſon* of "*Natland Millbeck* in the County aforeſaid Yeoman, and to the "Survivor of them and to the Heirs of ſuch Survivor for ever; "to have and to hold the ſaid Meſſuage Tenement and Premiſſes "with the Appurtenances unto the ſaid *Edward Shepherd* and "*Jonathan Williamſon* and to the Survivor of them their and his "Heirs and Aſſigns for ever: In Truſt nevertheleſs that they the "ſaid *Edward Shepherd* and *Jonathan Williamſon* and the Survi-"vor of them, their and his Heirs, ſhall and will, with all con-"venient Speed, after the Determination of the chaſte Viduity of "my ſaid loving Wife *Agnes*, ſell and convey the ſaid Meſſuage "Tenement and Premiſſes with the Appurtenances thereunto "belonging, in open Sale, for the beſt Price and moſt Monies "that can or may be had or gotten for the ſame; and the Mo-"nies ariſing by ſuch Sale of the Premiſſes hereby appointed to "be ſold, ſhall and will pay apply and diſpoſe of in Manner fol-"lowing, that is to ſay, Firſt, that my ſaid Truſtees ſhall and will "deduct thereout all neceſſary and reaſonable Coſts and Charges "which they or either of them ſhall be put unto in relation of "the Truſt in them repoſed in and by this my laſt Will and "Teſtament; and, ſecondly, that my ſaid Truſtees, after Deduc-"tion as aforeſaid, ſhall and will *divide the Reſidue* of the Monies

"or

" or Price of the Premiſſes hereby ordered to be ſold, *equally a-*
" *mongſt my Sons and Daughters* hereafter named, *or ſuch of them*
" *as ſhall be living at the Time of the Determination of the chaſte*
" *Viduity of my ſaid loving Wife Agnes*, that is to ſay, *Allan Court*,
" *James Court*, *Mary Court*, *Ann Court*, *Agnes Court*, *Sarah Court*,
" and *Hannah Court*, *Share and Part alike*; and in Caſe any of
" my ſaid Sons or Daughters ſhall depart this Life before the De-
" termination of the chaſte Viduity of my ſaid Wife, leaving Child
" or Children, then and in ſuch Caſe it is my Will and Mind
" that the Share or Shares of him or her ſo dying ſhall be equally
" divided amongſt his or her Children ſo left; and if any of my
" ſaid Sons or Daughters ſhall happen to dye before the Determi-
" nation of my ſaid Wife's Viduity, leaving no Children, then I
" do hereby give and bequeath the Share or Shares of him or her
" ſo dying equally amongſt ſuch of my ſaid Sons or Daughters as
" ſhall be living at the Determination of my ſaid Wife's Vidu-
" ity;" and appointed his Wife Executrix.

That the Teſtator died ſoon after making his ſaid Will; and on his Death, his Widow, the ſaid *Agnes Court*, entered, and enjoyed the ſaid deviſed Premiſſes till her Death; and ſhe died, and was buried the 2d of *June* 1769.

That at the Death of the Teſtator, all his Children were living: But two of them, namely *James* and *Sarah*, died in the Life-Time of his Widow, without Iſſue.

That *Hannah*, the Wife of the ſaid Pauper *Thomas Gibſon*, was one of the Daughters of the Teſtator, mentioned in his Will.

That the Pauper and his Wife were then in Poſſeſſion of *that Part* of the Houſe which the Mother had *permitted them to enjoy* as aforeſaid, but not in any other Part of the ſaid deviſed Premiſſes; and continued in Poſſeſſion thereof till *May-Day* 1770; but paid no Rent, from the Mother's Deceaſe till *Martinmas* 1769.

That Mr. *Shepherd*, the ſurviving Truſtee in the Will, after the Death of the ſaid Teſtator's Widow, to wit, on the 28th Day of *July* 1769, expoſed to be ſold and contracted for the Sale of the ſaid deviſed Premiſſes to one *Pindlatter*, for the ſum of 282 *l.* 5 *s.* and by Indentures of Leaſe and Releaſe, bearing Date reſpectively the 12th and 13th Days of *February* 1770, made between the ſaid *Edward Shepherd*, ſurviving Deviſee in Truſt of the laſt Will and Teſtament of the ſaid *Allan Court*, of the one Part, and the ſaid

Alexander

NATLAND and STAINTON.

Alexander Findlatter of the other Part, in Conſideration of 282 *l.* 5*s.* the ſaid *Edward Shepherd* did aſſign and convey all the ſaid deviſed Premiſſes unto the ſaid *Alexander Findlatter* and his Heirs: To which Conveyance, the Son and Daughters of the ſaid *Allan Court*, who were the Reſiduary Legatees, are no Parties.

That Mr. *Shepherd*, on the Execution of the Purchaſe-Deeds, received the Purchaſe-Money aforeſaid; and, after deducting all neceſſary Charges, divided the Remainder amongſt the Teſtator's four ſurviving Daughters, Share and Share alike, (the Son having gone abroad and not having been heard of for many years;) and that the Pauper afterwards paid *Findlatter*, the Purchaſer, half a Year's Rent due from *Martinmas* to *May-Day* 1770, for that Part of the Houſe he enjoyed as aforeſaid.

Upon which, it was inſiſted for the Appellants, that as the Pauper and his Wife inhabited in *Natland*, in Part of the Houſe deviſed as aforeſaid, from her Mother's Death in *June* 1769, *till the ſame was conveyed* in *February* following; and ſhe being *intitled to a diſtributive Share* of the Money to be raiſed by Sale of the ſaid deviſed Premiſſes, the Pauper was *not removeable during that Time*, and *conſequently* GAINED *a Settlement* in *Natland*.

See the Caſe of *the King againſt the Inhabitants of Wivelingham*, —*Doug.* 738. S. P.—But ſee the Caſe of *the King againſt the Inhabitants of St. Michael's in Bath*, *Doug.* 608. *Semb. contra.*

I have heard Counſel on both Sides; and am of Opinion "the Settlement is in NATLAND.

H. GOULD."

"*Lancaſter*, *March* 26th 1774."

Mr. *Wallace* moved (on *Wedneſday* 9th *November* 1774.) to quaſh this Order of Seſſions; and obtained a Rule to ſhew Cauſe.

But now, inſtead of ſhewing Cauſe, Mr. *Lee* and Mr. *Dunning* objected againſt the Court's *entering at all* into the Matter: For, that it had been *by Conſent referred to the Judge of Aſſiſe*; who had heard Counſel on both Sides, and given his Opinion in Writing thereupon; which Opinion, ſo given, ought to be *final*. They added, that if after this, the Court were to take it up again, and enter into a freſh Diſcuſſion of it, no Judge of Aſſize would ever hereafter accept a Reference of this Kind.

THE COURT ſaw it in the ſame Light; and thought this a very ſufficient Reaſon for their refuſing to enter into a freſh Diſcuſſion of the Queſtion. And

LORD MANSFIELD obſerved, that here was a *manifeſt* CONSENT *of the* PARTIES, to this Reference to the Judge; both Parties

Parties having, by their Counſel, been heard before him: And therefore this was like all other References by Conſent. If the Determination of the Judge of Aſſize ſhould not, in the preſent Caſe, be final and concluſive, it would be *adding* to the Trouble and Expence of this Sort of Litigations, which are already too expenſive. His Lordſhip intimated, that he was, as at preſent adviſed, of Opinion with the Judge. However, after ſuch a *Conſent*, he thought it very improper, to take the Matter up again.

NATLAND *and* STAINTON.

BY THE COURT unanimouſly.

THE RULE was (for *this* Reaſon) DISCHARGED.

Hilary Term

15 Geo. 3. 1775.

No. 248. Rex *v.* Inhabitants of St. Giles's in the Fields.

Saturday 11th Feb. 1775.

A Settlement may be gained by renting *Part* of a Houſe, of the yearly Value of 10 *l.*

TWO Juſtices removed *Eſther Orchard*, Wife of *Thomas Orchard* (gone from her,) and their three Children, *viz.* *Eſther* (aged four Years,) *Elizabeth* (aged two Years,) and *Sarah* (aged ſix Months,) from *St. Giles's* Pariſh to *St. Ann's Weſtminſter*. On Appeal from their Order, the Seſſions quaſhed it; ſtating the following Caſe—

That the ſaid *Eſther Orchard* was married to the ſaid *Thomas*, about eight Years previous to the ſaid Removal; and had, by him, the ſaid Children.

That the Father of the ſaid *Thomas Orchard* was legally ſettled in the Pariſh of *St. Ann Weſtminſter:* And that he the ſaid *Thomas* had not done any Act to gain a Settlement in his own Right; except that about twelve Mouths previous to their ſaid Marriage, he took a Shop, at fifteen Guineas *per Annum*, in *Piccadilly* in the Pariſh of *St. James Weſtminſter*, being Part of the Houſe of one Mrs. *Ladler*; which Shop, at the Time of his taking it, had no Door but that which opened immediately into the Street, nor any Communication with the other Part of the Houſe. That the ſaid *Thomas Orchard* likewiſe agreed for the Uſe of the Water and Neceſſary, (which were within the Houſe;) to which he had Acceſs, in common with the other Lodgers, by another Door belonging to the Houſe, which opened into a Court leading from *Piccadilly*

Piccadilly to *Jermyn-Street*; and alſo agreed, at the Time of taking the Shop, that his Siſter (who was Part of his Family) ſhould lodge with Mrs. *Ladler*'s Maid in the Garret of the ſaid Houſe; for which he was to pay an additional Rent over and above the fifteen Guineas. That in leſs than a Month after he had taken Poſſeſſion of the Shop, finding it inconvenient to go out at one Door and in at the other, he applied to Mrs. *Ladler* for Leave to open a Way through the Partition which ſeparated the Shop from the Stair-Caſe. That ſhe conſented thereto; and he opened the ſame accordingly. That he rented, and conſtantly laid and reſided in the ſaid Shop, and publickly carried on his Trade of a Shoemaker in the ſame, (having ſuch Communication to the Water, the Neceſſary and the Stair-Caſe by which his Siſter went to her Lodging in the Garret, as aforeſaid,) until the Time of his ſaid Marriage: And that he continued in the ſaid Houſe, under the ſaid Circumſtances, for about two Years afterwards. And that the ſaid Mrs. *Ladler* rented, and reſided in the ſaid Houſe during all the Time of the ſaid *Thomas Orchard's* Reſidence as aforeſaid; and paid thirty Pounds *per Annum* and all parochial Taxes for the ſame.

St. Giles in the Fields and St. Ann Weſtminſter.

This Court [the Seſſions] therefore, upon Conſideration of the Circumſtances above ſet forth, doth allow the ſaid Appeal, and doth *vacate* the Order of the ſaid two Juſtices: And the ſaid Appeal is hereby allowed, and the ſaid Order of the ſaid two Juſtices is hereby *vacated* and ſet aſide accordingly.

Mr. *Lucas* moved on (*Saturday* 28th *January* 1775,) to quaſh this Order of Seſſions: And the Court gave him a Rule to ſhew Cauſe.

His Objection was, that upon the Facts ſtated, *Thomas Orchard* could not be conſidered as having gained a Settlement in *St. James's* Pariſh by renting a *Tenement* in it of the Value of ten Pounds a Year. He was only a *Lodger*, an *Inmate*, an Occupier of *Part* of a Houſe: Which, Mr. *Lucas* ſaid, was not ſufficient to gain him a a Settlement.

Mr. *Howarth* now ſhewed Cauſe; and argued that it *was* ſufficient. It is renting a Tenement of the Value of ten Pounds a Year. A Houſe is as much a *Tenement* as Land: And ſo is *Part* of a Houſe. So is a Shop. This is a Shop in which the Man lay, lived, and reſided; and which had originally no Sort of Communication with the Houſe, but had a diſtinct Door into the Street. A Perſon may gain a Settlement by renting only Part of a

St. Giles in the Fields and St. Ann Westminster.

a Houſe, if what he rents is of the Value of ten Pounds a Year. Mr. Juſtice *Wilmot* ſaid, in the Caſe of *Duns Tew* (*v. ante, p.* 400.) "that a Tenant may ſubdivide to Undertenants; who may "thereby gain Settlements, if they take the Value of ten Pounds "a Year." And he cited the Caſe of *St. George's Hanover-Square*, where *John Malcomb* hired the firſt and ſecond Floor, unfurniſhed, of a Houſe in *St. James's Weſtminſter*, of the Value of 40 *l.* a Year. [See this Caſe, *ante*, pa. 692. No. 217.]

Mr. *Lucas* and Mr. *Wallace* argued againſt the Order of Seſſions; and urged, that it muſt be an *entire* Tenement of the Value of ten Pounds a Year, to gain a Settlement: Whereas this was only a *Part* of one, in which the Landlady herſelf reſided and paid all the Taxes. They ſaid that the 21 Juſtices preſent at the Seſſions were divided eleven againſt ten, and wiſhed to have the Opinion of *this* Court.

The Court were of Opinion, "that this was, undoubt-"edly, a Tenement of the Value of ten Pounds a Year:" And the Criterion of this Method of gaining a Settlement is the Ability to rent a Tenement of that Value.

Rule discharged: and the Order of Seſſions affirmed.

Eaſter Term

15 Geo. 3. 1775.

Rex *v.* Inhabitants of Spawnton.

No. 249.

Saturday 13th May 1775.

The *Apprenticeſhip* of an *Infant* may be *diſſolved*, with the *Conſent* of all Parties concerned. And *Hiring* and *Service* for a Year will gain a Settlement, though Part of the Service be performed under a *prior* Hiring for *leſs* than a Year.

TWO Juſtices made an Order for the Removal of *Philip Dunning*, the younger, from the Townſhip of *Welburn* in the North Riding of *Yorkſhire* to the Townſhip of *Spawnton* in the ſame Riding: Which Order was confirmed by the Seſſions; who ſtated the Caſe ſpecially.

The ſpecial Caſe ſtated upon the Order of Seſſions was as follows—

That the Pauper *Philip Dunning*, being about ten or eleven Years of Age, by Indenture, mentioned to be between *Francis Stonehouſe* of the Townſhip of *Spawnton*, of the one Part, and *Philip Dunning*, the Pauper, of the other Part, of his *own free Will and Conſent of his Friends*, put and bound himſelf *Apprentice* to the ſaid *Francis Stonehouſe*, for the Term of ſeven Years, to learn the Buſineſs of a Weaver. That he ſerved three Years under the ſaid Indenture, at *Spawnton*; when by the CONSENT *of the Father, the Pauper, and the Maſter*, the *Indenture was cancelled*, by tearing off the Seals and Names of the Pauper and Maſter, on Account of the Pauper's Want of Health.

That he afterwards went to *Welburn*, to live with *James Boynton*, a Miller, from *Whitſuntide* to *Martinmas*: And after being there ſome Time, his Maſter agreed to give him a Guinea for the Work that he had done, and was to do till *Martinmas*. That at

Martinmas

SPAWNTON *and* WELBURN.

Martinmas he hired to the ſaid *Boynton for a Year*, for four Guineas and Stockings.

Some Time before *Lammas* following, the Pauper was obliged to *quit that Service*, on account of his Health; and went to *Scarborough*, to bathe; where he continued ſeven Weeks: And after he left *Scarborough*, he went to the County-Hoſpital at *York*.

Mr. *Chambre* moved (on *Wedneſday* 15th *June* 1774) to quaſh both theſe Orders: For, the legal Settlement of the Pauper was at *Welburn*, not at *Spawnton*. Rule to ſhew Cauſe.

Mr. *Wallace* now ſhewed Cauſe. He acknowledged the Indenture to be *regularly cancelled*; as it was done by Conſent of *all Parties concerned in the Contract*: (Which would not have been the Caſe, if he had been a *Pariſh*-Apprentice. *v. ante*, pa. 766. No. 239.) But he alledged, that there was nothing ſtated ſufficient to ſhew that he had gained any other Settlement elſewhere: and therefore he remained fixed at *Spawnton*.

See alſo, *ante*, No. 180.

Mr. *Dunning*, who was Counſel for *Spawnton*, anſwered, that a ſubſequent Settlement is ſufficiently ſtated to have been gained at *Welburn*; where he appears to have ſerved *more than a Year*; *viz.* from *Whitſuntide* to *Martinmas*, and from *Martinmas* to the following *Lammas*, very nearly.

THE WHOLE COURT was of this Opinion, and accordingly made the Rule abſolute.

BOTH ORDERS QUASHED.

Vide ante, No. 37, 175. S. P.

No. 250. Rex *v.* Inhabitants of Offerton.

Saturday 13th May 1775.

TWO Juſtices, by an Order of Removal dated 22d *April* 1774, removed *John Readfearn*, *Hannah* his Wife, *Samuel* (aged eight Years,) *Mary* (aged five Years,) *John* (aged three Years,) and *Joſeph* (aged one Year,) their Children, from the Townſhip of *Offerton* in the County of *Cheſter*, to the Townſhip of *Stockport* in the ſame County: Which Order was vacated by the Seſſions, upon an Appeal, after ſtating the following Caſe; *viz.*

An Apprentice may gain a Settlement by ſerving a *ſecond* Maſter under a ſpecial Agreement with the *firſt*, that *he ſhall be at Liberty to work for his own Benefit.*

That

That the Pauper *John Redfearn* was originally ſettled in the Townſhip of *Hatterſley* in the Pariſh of *Mottram Longdendale* in the ſaid County of *Cheſter*; and when of the Age of twelve Years, he the Pauper was, by an Indenture bearing Date the 25th of *April* 1759, bound an *Apprentice*, by the Churchwardens of the ſaid Pariſh of *Mottram* and the Overſeers of *Hatterſley* aforeſaid, to *Benjamin Redfearn* a Linnen-Weaver in *Hatterſley* aforeſaid, for the Term of ſeven Years. That the Pauper was a Party to and executed the ſaid Indenture; which was allowed by two acting Magiſtrates for the ſaid County, purſuant to the Statute.

That the Pauper removed, with his Maſter, out of the ſaid Townſhip of *Hatterſley* into the Townſhip of *Stockport*, a few Days after the Date and Execution of the ſaid Indenture.

That the Pauper ſerved his ſaid Maſter five Years and ſeven Months in the ſaid Townſhip of *Stockport*, under the ſaid Indenture; and lodged at his Maſter's Houſe in *Stockport* aforeſaid, during ſuch Time.

That the Pauper and his Maſter then entered into the following AGREEMENT—"That the Pauper, *upon paying his Maſter twelve* "*Pence a Week*, and *providing for himſelf*, ſhould be at Liberty to "*work for his own Benefit* DURING THE REMAINDER OF HIS "APPRENTICESHIP-TERM; and the Maſter ſhould find the "Pauper a Loom, for the Remainder of his Apprenticeſhip;" (which he did:) "And that the *Maſter was to receive the twelve* "*Pence a Week*, as a SATISFACTION *for his Service during the* "*Remainder of his Apprenticeſhip.*"

That the Pauper, at the Time of making ſuch Agreement, was of the Age of *eighteen* Years; and immediately after the ſame was concluded, he the Pauper MARRIED, and *left his Maſter Benjamin Redfearn.*

That neither the Churchwardens of *Mottram* nor the Overſeers of *Hatterſley* were acquainted or *privy to ſuch Agreement* being made; NOR *was the Indenture cancelled or delivered up.*

That the Pauper afterwards reſided, *as Maſter of a Family*, about five Months, with his Wife, in the Townſhip of *Stockport*; *worked for his own Benefit*, and was *not accountable* to his Maſter for what he earned; nor did his Maſter provide him with the Goods he worked up, after ſuch Agreement was made: But the Maſter provided him with a Loom as aforeſaid, and received the one Shilling for ſeveral Weeks, under the Agreement from the Pauper, whilſt he reſided at *Stockport*.

That

OFFERTON and STOCKPORT.

That the Pauper *took a Houſe*, and *removed with his Family* into the Townſhip of *Offerton*, which adjoins to the Townſhip of *Stockport*, about *twelve Months* before the ſaid Apprenticeſhip would have expired, and continued to reſide in the ſaid Townſhip of *Offerton* from that Time till the Order of 22d *April* laſt was granted; the *Pauper working for the ſame Tradeſman who employed the Maſter:* But ſuch Tradeſman did not ſettle, nor any ways account with the Maſter, for the Pauper's Work or Earning; but the *Maſter provided him with a Loom*, whilſt the Pauper reſided in *Offerton*.

That the Pauper, during the Time he reſided in *Offerton*, (which was for the Remainder of the Time under the Indenture of Apprenticeſhip, and being near twelve Months,) did *not* work with any Perſon by the PARTICULAR *Direction or Conſent of his ſaid Maſter*, but *received* the Profits and Emoluments of his Trade to his *own Uſe:* But the Maſter KNEW, during all that Time, *when and with whom* the Pauper was *working*; and the Maſter applied, two different Times, to the Pauper, during the Time that he ſo reſided in *Offerton*, (and before the Time for which the weekly Payments were to be made was expired,) for *Money* upon account of the further Arrears of twelve Pence a Week due to him in Purſuance of ſuch Agreement; but *never received* any Money from the Pauper, *after* he removed into *Offerton*; but *often demanded* it, and *would have received it, if* the Pauper had been able to pay him; and often threatned him for not paying it.

The Seſſions, upon Conſideration of theſe Facts, and hearing what had been alledged relating to the Settlement of the Paupers, were of Opinion, "that their Settlement is in the ſaid Townſhip "of OFFERTON:" And therefore they repeal and make void the ſaid Order of the two Juſtices, which removed them from thence to *Stockport*.

Mr. *Buller* having obtained a Rule to ſhew Cauſe why this Order of Seſſions ſhould not be quaſhed;

Mr. *Wallace*, Mr. *Pepper Arden*, and Mr. *Bolton*, on *Monday* 13th *February* 1775, ſhewed Cauſe againſt quaſhing it.

The Apprenticeſhip, they ſaid, was *never diſſolved:* It *continued* in its full Force, notwithſtanding this Agreement, and what was done in Conſequence of it. It was all done by the *Conſent of the Maſter*, and with his *Knowledge and Approbation*. It was all, therefore, a Service *under the Indenture*; and gained a Settlement to the Apprentice in the Pariſh where the *laſt forty Days* Service

was

was performed: Which was in *Offerton*. The Master knew with what Tradesman his Apprentice was working: And that Tradesman must have known that the Pauper was *Benjamin Redfearn's* Apprentice; as that Tradesman employed *Benjamin Redfearn*, the Master, as well as *John Redfearn* the Apprentice.

They cited the Cases of *Austrey*, (*ante*, pa. 441. No. 142.) and of *Fremington*, (*ante*, pa. 416. No. 133.) and of *Tavistock*, (*ante*, pa. 578. No. 186.) and of *St. Luke's* in *Middlesex*, (*ante*, pa. 542. No. 174.)

See also *ante*, No. 91. *Rex v. Inhabitants of Clapham.*

Mr. *Buller* and Mr. *Dunning* argued, on the contrary, for quashing the Sessions Order and affirming the original Order which removed the Paupers from *Offerton*, as not being their proper Settlement: And they argued that this could *not* be considered as a *Service under the Indenture* of Apprenticeship. The Agreement itself manifestly proved the contrary. It was express, "that the "Pauper was to work for his *own* Benefit;" and that the Shilling a Week was in "*Satisfaction* for his Service." In order to make it a Service under the Indenture of Apprenticeship, an *express and explicit Leave* must be given by the Master, *to the particular Service*. So it was resolved, in the *Austrey* Case; and so the Fact was, in the *Fremington* Case. Here was *no Privity* between the two Masters: Which is also necessary. For which, they cited the Case of *St. Luke's* in *Middlesex*: (See *ante*, pa. 544.) The Tradesman at *Offerton* could not know that the Pauper was an Apprentice: He appeared to be *sui juris*. Therefore it is not like the Case of *Tavistock*. The twelve Pence a Week was never received by the Master, after the Pauper removed into *Offerton*.

The Court were of Opinion, that the Apprenticeship *continued*: There was *no Dissolution* of it, nor Intention to dissolve it. As between the original Master and the Apprentice, the Master knew that the Apprentice worked in *Offerton*, and demanded the twelve Pence a Week for it: An Apprentice may work in any Parish, with the Consent of his Master. And it is probable that the Tradesman with whom he worked knew that he was an Apprentice: For, that Tradesman employed the Master.

They held, therefore, that the Service in *Offerton* was *under* the Indenture of Apprenticeship; and, consequently, that the Rule ought to be discharged.

Rule discharged:
Order of Sessions affirmed.

Offerton and Stockport.

Memorandum—

On the first Day of shewing Cause, *viz. Monday* 13th *February* 1775, Lord Mansfield said, His great Object in Cases of this Kind was Certainty: And it was very improper that they should be brought on unexpectedly, upon the last Day of a Term. He had made some general Rules, he said, for the Convenience of the Court; and he would now take this Occasion to add another, namely, "That all Sessions-Cases be, for the future, *set* "*down in the* Crown-Paper; and that a *Copy* of the "Order be left with the junior Judge of the Court, two "Days before it comes on for Argument."

Let this be a standing Rule for the future.

No. 251.

Rex *v.* Inhabitants of Halifax.

Wednesday May 17th 1775.

A *Son* shall follow the Settlement of his *Father*, unless *emancipated*.

Two Justices removed *Joshua Bragg* and *Lydia* his Wife, and their seven Children (specifying their Names and Ages) from the Township of *Halifax* in the West Riding of *Yorkshire* to the Township of *Warley* in the same Riding: And their Order was, upon an Appeal, discharged by the Sessions; who stated the following Case—

That *John Bragg*, Father of the Pauper, went with a *Certificate* from *Skircoat* to *Halifax*, in the Year 1733; where the Pauper was born, and when he was about fifteen Years of Age, he bound himself an Apprentice to *William Smith* of *Halifax* Stuff-Weaver, for four Years; and served his Master there, for that Time. After he was out of his Time, and when he was *about nineteen* Years of Age, his *Father* took a Farm of twelve Pounds *per Annum* in *Warley*; and went to reside there with the *rest* of his Family. That his Son, the Pauper, always after the Father went to *Warley*, *worked about the Country* as a Stuff-Weaver, but *came to his Father when he pleased*, and had some *Holyday-Cloaths at his Father's*

ther's Houſe. That when he came and had his Meat with his Father, he *paid* for it. And that the Pauper had done no other Act to gain a Settlement. The Court [of Seſſions] diſcharged the Order which removed him from *Halifax* to *Warley*.

Mr. *Fenton* moved, on *Saturday* 26th *November* 1774, to quaſh this Order of Seſſions; the legal Settlement of *Joſhua Bragg* being at *Warley*: For, as he was a *Minor* (only about nineteen) when his Father went to reſide in a Farm of 12 *l.* a Year at *Warley*, and had gained no Settlement of his own, his Settlement muſt follow that of his *Father*.

On *Saturday* 4th *February* 1775, Mr. *Tooker* and Mr. *Dunning* ſhewed Cauſe. They denied that any Thing appeared upon the State of this Caſe to ſhew that the *Father* gained any Settlement at *Warley*, himſelf: And if he did not, he could not communicate a derivative Settlement there to his Son. Now it is not ſtated that the Father reſided there *forty Days*. However, admitting "that "he did," yet this Son was *no Part of his Family*. It is rather ſtated negatively, "that he was *not*:" For, the Words are, "that he went with the *reſt* of his Family;" which Expreſſion excludes this Son. He did not accompany his Father thither: And when he did go, it was only to make Holyday. They cited the Caſes of *Cumner* and *Milton*, 2 *Salk*. 528. *Eaſt Woodbey* and *Weſt Woodbey*, 1 *Stra*. 438. *St. Michael's Coſlany* in *Norwich*, and *St. Matthew's* in *Ipſwich*, 2 *Stra*. 831. *Rex* v. *Inhabitants of Walpole St. Peter's*, *ante*, pa. 638. No. 197.

Mr. *Fenton* anſwered, with regard to the forty Days Reſidence in *Warley*, that in Fact the Father reſided ſome *Years* there.

Lord Mansfield was not then in Court.

The other three Judges thought that the Son could not be conſidered as emancipated, or independent of or ſeparated from his Father: He went to his Houſe when he pleaſed, and had Clothes there.

Mr. Juſtice Aston ſaid, that where a Son is become *independent* of his Father's Family, or *emancipated* from it, he will not acquire a Settlement where his Father goes to reſide: But if he *remains Part* of his Father's Family, he will acquire a derivative Settlement where his Father goes and ſettles. The Diſtinction was well laid down, he ſaid, in the *Bugden* Caſe: (*v. ante*, 270. No. 93.) And he obſerved, that in the Caſe of *Walpole St. Peter's*, the Son had been four Years a Soldier, and was emancipated from

Halifax and Warley. his Father's Family, and had ceased to be Part of it. But it is not here stated, *how long* the Father resided at *Warley*.

Order sent back, to be re-stated.

The Order was afterwards sent up, re-stated.

The re-stated Order is as follows—

John Bragg, the Father of the Pauper, went with a *Certificate*, in the Year 1733, from *Skircoat* to *Halifax*; where the Pauper was born: And when he the Pauper was about fifteen Years of Age, he bound himself an Apprentice, by Indenture, to *William Smith* of *Halifax* Stuff-Weaver, for the Term of *four* Years; and served his Master there, for *that* Time.

Immediately after the Expiration of the said four Years, his Master delivered up the Indenture to the Pauper, who was then *about nineteen* Years old; and his *Father*, who had then taken a *Farm of twelve* Pounds *per Annum* in *Warley*, made a Supper on Account of the Expiration of the Apprenticeship: To which Supper the Master, and the Person who had prepared the Indenture, were invited.

That the *Father hath resided* upon the said Farm of twelve Pounds *per Annum* in *Warley*, with the rest of his Family, *ever since*.

That his Son, the Pauper, after the Father went to *Warley*, *worked about the Country*, as a Stuff-Weaver; but came to his Father's House in *Warley* whenever he *pleased*; and *kept his Holiday Clothes* there; and considered his Father's House *as his own Home*, till he was *about twenty* Years and nine Months old; when he *married*.

That when he came to his Father's House, he *paid for what he had*; and was his *own Master*, to go and work for himself, wherever he pleased; and has done no other Act to gain a Settlement since.

The Order being thus re-stated, Mr. *Fenton* (on the second Day of this Term) renewed his Motion to quash it; as it now appears that the Father had resided *above forty Days* at *Warley*.

A Rule was made, to shew Cause: And it was ordered to be set down in the *Crown-Paper*, pursuant to the general Rule made upon the last Day of last *Hilary* Term: *v. ante*, at the End of No. 250. pa. 806.

It

It now came on, accordingly, in the Crown-Paper—
And no Defence being made for the Order, it was QUASHED.

HALIFAX *and* WARLEY,

THE * COURT said, they had before sufficiently declared their Opinions eventually; that is, in Case the Fact should come out, upon re-stating, to be what it now appears to be.

* Lord Mansfield absent.

ORDER OF SESSIONS QUASHED.
ORIGINAL ORDER AFFIRMED.

Rex *v.* Inhabitants of Carshalton.

No. 252.

Saturday 20th May 1775.

A Tenant must be *rated*, as well as *pay*, in order to gain a Settlement.

TWO Justices made an Order for the Removal of *Thomas Rummels*, *Mary* his Wife, and *Thomas* their Son (aged about one Year and three Months,) from the Parish of *Carshalton* in *Surry* to the Parish of *St. Magnus*, in the City of *London*: Which Order the Sessions discharged upon an Appeal; subject to the Opinion of this Court on the following Case—

The Case stated. The Removal to *St. Magnus*, as the Place of their last legal Settlement, was under a regular Hiring and a Servitude for a Year. The Hiring and Servitude for a Year in *St. Magnus* was fully proved; and that the Pauper was a Housekeeper in *Carshalton*, in a House belonging to *William Bridges* Esq; at the yearly Rent of four Pounds; and that the said Pauper had resided several Years in the said House, and had during his Residence there *paid the Land-Tax*.

Carshalton thereupon produced the Land-Tax Books, to shew "that the said Pauper, during his said Residence there, had *never* "*been* RATED *at all*." The Title of which Rate-Books are as followeth—"*Surrey*, A Rate or Assessment of two Shillings and "three Pence in the Pound (Rent) made on the Landholders "and Inhabitants of the Parish of *Carshalton*, for raising the "Sum of *L.* 367: 8: 0 by a Land-Tax, for the Service of the "Year 1771, and made in Manner and Form following.

Yearly

CARSHALTON and ST. MAGNUS.

Yearly Rent	Landlords rated		Names of Occupiers.	Sums assessed.
L. 4 : 0 : 0	W. Bridge Esq;	For Lands and Tenements in the Occupation of	Thomas Rummels.	L. 0 : 9 : 0

N. B. All the other Assessments are made in like Manner.

It was likewise proved, that the Collectors, who are Parishioners, *demanded* the said Tax *so assessed* of the said Pauper; who paid it; saying, at the same Time, "that he *paid* it in his *own* "Right:" And they, from Time to Time, gave him a Receipt for it in Manner following, to wit—"Land-Tax, *William Bridges* "Esq; Received the Day of *of Thomas* "*Rummels*, the Sum of : So much "being assessed *on the Landlord*, for the four quarterly Payments, "pursuant to an Act of Parliament for granting an Aid to his "Majesty, by a Land-Tax to be raised in *Great Britain* for the "Service of the Year one Thousand seven Hundred and "." And the said *Thomas Rummels* also alledged, "that "the Landlord *never repaid* it him again."

Upon THIS *Evidence*, the Court [of Sessions] found "that the "Pauper *Thomas Rummels* was both *rated to* and paid the said "Tax in his *own Right*;" and adjudged his Settlement to be at *Carshalton*. And thereupon the Appeal is allowed; subject to the Opinion of the Court of King's Bench, on the above Case.

Michael Lade.
Thomas Ponton.

Mr. *Lade* moved (on *Saturday* 13th *May* 1775) to quash this Order of Sessions; because the Pauper was *not rated* in *Carshalton*: Whereas, a Settlement can't be gained, without being *rated*, as well as paying.

Mr. *Wallace* and Mr. *Lucas* now shewed Cause. They argued, that it was not necessary that the Person should be rated *by Name*, or

or expreſsly *as Occupier*: It is enough if it amounts to full *Notice* "that ſuch a Perſon is come to reſide in the Pariſh." And this is ſo: His name appears upon the public Pariſh-Books; he is named as Occupier; and the Collectors are ſtated to be Pariſhioners; and they demanded and received it of him, and gave him a Receipt for it. And the Court of Seſſions have expreſsly and poſitively found "that the Pauper *was both rated to and paid* "the Tax in his *own Right*:" And they have adjudged his Settlement to be in *Carſhalton*. They cited and diſcuſſed ſeveral former Caſes upon this Subject, which it would be tedious to repeat here, as I have already reported them at large in the former Volumes; where the Reader may if he pleaſes, ſee them under the following Numbers, *viz.* No. 21. No. 22. No. 29. No. 30. No. 132. No. 148. No. 155. and No. 192. CARSHALTON and ST. MAGNUS. See alſo *ante*, No. 245. *Poſt.* No. 254. *Doug.* 214. S. P.

Mr. *Bearcroft* and Mr. *Lade* argued in Support of the Rule for quaſhing the Order of Seſſions. Though the Seſſions have indeed found "that the Pauper was both *rated* and "paid," and have adjudged his Settlement to be in *Carſhalton*; yet they have expreſsly declared that they did it "*upon* "the Evidence ſtated." So that they appear to have drawn a wrong Concluſion from what they themſelves have ſtated as the Facts from whence they drew it. But when the Facts and Evidence are thus fully before the Court, the Court will draw the right Concluſion from them: Which is, "that the "Pauper was *not* rated nor ſettled in *Carſhalton*." It appears, clearly, that he was *not the Perſon rated*: *William Bridges* Eſq; is, in expreſs Terms, the Perſon rated as Landlord. It is a Tax upon the Landlord; and the Landlord is bound to repay him: The Receipt is given for the Money, as ſo much aſſeſſed upon the Landlord. His *mere ſaying* "that he paid "it in his *own* Right" was therefore of no Conſequence: For, it is manifeſt that he did *not*. And as to his *Name* being *inſerted as Occupier*, that is only a Deſcription, or rather Part of a Deſcription of the Tenement. They cited the Caſe of *Painſwick* and *Cirenceſter*, where the Rate was "*Thomas* "*Clifford*, or *Tenant*." See this Caſe at large, *ante*, pa. 465 to 468. No. 148.

THE COURT, with very great and declared Regret, gave their Opinion "that the *Landlord* is here the *Perſon rated*, "and

CARSHALTON and ST. MAGNUS.

"and *not the Tenant.*" It appeared to be a very hard Case, upon the poor Man who was removed: But they thought this Objection too strong to be gotten over. They referred to the Case of the King and the Inhabitants of *Sarratt*, (*ante*, pa. 73. No. 21.) and very unwillingly made the Rule absolute.

ORDER of SESSIONS QUASHED: ORIGINAL ORDER AFFIRMED.

As to what shall be deemed a sufficient rating, see the Case of *the King against the Inhabitants of Carhampton*, *Doug.* 599.

Trinity Term

15 Geo. 3. 1775.

Rex *v.* Inhabitants of Carleton. No. 253.

Wednesday 21ſt June 1775.

The *Wife* and *Children* of an *Iriſhman*, who has no Settlement, cannot be removed from his Place of Reſidence.

TWO Juſtices made an Order for the Removal of *Johanna* the Wife of *Simon MacOwen*, and *Mary*, *Margaret*, *Elizabeth*, and *John*, their Children, from the Townſhip of *Hoylandſwain* in the Weſt Riding of *Yorkſhire* to the Townſhip of *Carleton* in the ſaid Weſt Riding: Which Order was confirmed by the Seſſions.

The two Juſtices, in their Order, ſtate that Complaint was made to them by the Churchwardens and Overſeers of *Hoylandſwain*, "that *Simon MacOwen*, *Johanna* his Wife, and *Mary*, *Margaret*, "*Elizabeth*, and *John*, their Children, came lately to inhabit in "*Hoylandſwain*, not having gained a legal Settlement there; and "that the ſaid *Simon MacOwen* is an *Iriſhman*, and has done no "Act *in England* whereby to gain a legal Settlement; and that "the ſaid *Johanna* his Wife, and *Mary*, *Margaret*, *Elizabeth*, "and *John*, their Children, are *actually become chargeable* to *Hoy*-"*landſwain*." And they adjudge this Complaint to be true; and the laſt legal Settlement of the ſaid *Johanna the Wife* of the ſaid *Simon MacOwen*, and *Mary*, *Margaret*, *Elizabeth*, and *John*, their Children, to be *in Carleton*: And therefore they remove them thither.

The Seſſions, upon Appeal to them, ſtate the following Caſe—*viz.*

CARLETON *and* HOYLANDSWAIN.

It appeared in Evidence, that *John Tyas*, Father of the ſaid *Johanna MacOwen*, in the Year 1727, came to reſide in *Hoylandſwain* aforeſaid; bringing with him, and delivering to the Overſeers of the Poor there, a *Certificate* duly made and allowed, whereby the Churchwardens and Overſeers of the Poor of the ſaid Townſhip of *Carleton* certified and acknowledged the ſaid *John Tyas* to be legally ſettled in their ſaid Townſhip.

That afterwards, whilſt the ſaid *John Tyas* reſided in the ſaid Townſhip of *Hoylandſwain* under the ſaid Certificate, the ſaid *Johanna* his Daughter was born there; and continued to live with him until ſhe was upwards of 21 Years of Age. That ſhe afterwards *took a Houſe* in the ſame Townſhip of *Hoylandſwain*, and reſided therein until ſhe was married to the ſaid *Simon MacOwen*; who, upon his Marriage, went to reſide with the ſaid *Johanna* his Wife in her ſaid Houſe, and continued to reſide with her therein from the Time of their ſaid Marriage, which was in the month of *September* 1766, until ſhe the ſaid *Johanna*, and *Mary*, *Margaret*, *Elizabeth*, and *John*, the Wife and Children of the ſaid *Simon MacOwen*, were removed under the ſaid Order of the 27th Day of *January* laſt, *from the ſaid Simon MacOwen*, and *from his ſaid Dwelling-houſe* wherein he then lived and ſtill continues to reſide.

That the ſaid *Simon MacOwen*, from the Time of his ſaid Marriage, followed the Buſineſs of a Cloathdreſſer, and thereby maintained himſelf and his ſaid Wife and Family, until a little Time before the ſaid Order of Removal was made; when his ſaid *Wife and Children being taken ill of a Fever*, ſhe the ſaid *Johanna* applied to the Overſeers of the Poor of the ſaid Townſhip of *Hoylandſwain for Relief*; and that the ſaid *Simon MacOwen*, her Huſband, afterwards applied to a Juſtice of the Peace for an Order for Relief, and obtained one; and that they were *actually relieved* by the Overſeers of *Hoylandſwain*, in Purſuance of the ſaid Order; and that the Reaſon of the ſaid *Johanna's* aſking Relief was becauſe ſhe and her Children were *ill of a Fever*; and that ſhe was not recovered at the Time ſhe was removed, and could hardly ride.

That they were diſbanded of every Thing; the Landlord having ſeized all their Goods, for Rent.

That ſhe had hired the Houſe before their Marriage; and that ſhe and her Huſband had reſided therein until ſhe and her Children were removed; and that he the ſaid *Simon MacOwen*, her Huſband, ſtill continues Tenant and reſides in the ſaid Houſe, and acquires

quires his Living by his own Labour and Induſtry: But that he is an IRISHMAN, and hath *not* gained any Settlement in *England*. CARLETON *and* HOYLAND-SWAIN.

That his Wife and Children were SEPARATED *from him* by and under the ſaid Order of Removal, and ſtill continue ſo to be.

And the Court [of Seſſions] confirmed the ſaid Order.

Mr. *Chambre* moved (on *Saturday* 27th *May* 1755) to quaſh the Orders. He objected to their Validity, as they would occaſion a *Separation* between Huſband and Wife; and amount, in Effect, to a Divorce. The Huſband continues to live and reſide in *Hoylandſwain*, and acquires his Living there, by his Labour and Induſtry, following the Buſineſs of a Cloathdreſſer. His Wife cannot be ſent from the Pariſh where he is reſident. This was agreed in the Caſe of *St. Michael's* in *Bath* and *Nunny* in *Somerſetſhire*, 1 *Stra.* 544. [I have alſo a Note of this Caſe: Which is one of the firſt Notes I ever took; and the very firſt of this Kind. The Name of the married Woman removed without her Huſband, was *Elizabeth Daniel.* It was agreed "that the Wife and Children "could not be removed from her Huſband."] Mr. *Chambre* had a Rule to ſhew Cauſe.

Mr. *Fenton* and Mr. *Tooker* now ſhewed Cauſe. They argued, that the Queſtion depended entirely upon the Certificate-Act 8 & 9 *W.* 3. *c.* 30. which is a poſitive Law and can't be ſet aſide; and is likewiſe a remedial and beneficial Law. It is general, and without Exception; and binds the Pariſh that gave the Certificate, to receive the Perſons certificated, whenever they ſhall become chargeable. The Words are * "that it ſhall *oblige* the ſaid Pariſh "to receive and provide for the Perſon mentioned in it, together "with his or her Family, as Inhabitants of that Pariſh, whenever "he, ſhe, or they ſhall happen to become chargeable to or be "forced to aſk Relief of the Place to which ſuch Certificate was "given." Now here is a regular Certificate, containing an explicit Acknowledgment "that *John Tyas* was legally ſettled in "*Carleton*" And *Johanna*, the Pauper, the Wife of *Simon Mac-Owen* and Mother of the Children, was born at *Hoylandſwain*, whilſt *John Tyas* reſided there *under* this Certificate. Therefore the Townſhip of *Carleton* is bound by this Certificate and their own Conceſſion, to receive and provide for *Johanna* and her Children; and are *concluded and eſtopped* thereby, to object againſt it. She has never gained any ſubſequent Settlement. She could gain none by her Marriage: For, her Huſband had none himſelf. Her

* V. Sect. 1.

CARLETON *and* HOYLAND-SWAIN.

former Settlement is *not ſuſpended* by her Intermarriage with a Man who had none: It *remains*, and is communicated to her Children. And the ſending her to *Carleton* does not ſeparate her from her Huſband: For, he may go to her there. He ought not to remain in *Hoylandſwain*. He has as much Right to be in one of theſe Places, as in the other. They cited the Caſe of the King and the Inhabitants of *St. Botolph's* without *Biſhopſgate*, *ante*, pa. 367. No. 118.*

* I chooſe to cite this Caſe from my own Account of it rather than from any other; partly, becauſe I have reported it very fully, and (I hope) truly; and partly, for the following Reaſon, namely, that I may thus publickly put in my Claim to have *notified*, at the Time when I publiſhed the Caſe of *Norton*, "that it had been afterwards de-"liberately, ſolemnly and unanimouſly *contradicted and* "*over-ruled* by the later ſettled Reſolution of *St. Bo-*"*tolph's*." The former Reſolution (which is my No. 39. page 122.) was "that a married Woman's Maiden-"Settlement is SUSPENDED during her Coverture, ſo that "ſhe cannot be ſent to it in the *Life-Time* of her Huſ-"band, though he had none of his own: but it *revives* "again after his Death." The latter Reſolution (which is my No. 118. page 367.) was "that it is NOT *ſuſpend-*"*ed*, but *continues and remains*; having never been deter-"mined by her Marriage with a Man who had none." To this ſecond Caſe of *St. Botolph's* I expreſsly referred, at the End of the former, and mentioned the Subſtance of it; propoſing to give a full Account of it in the Progreſs of the Work: And I did ſo accordingly, in my ſecond Volume. Yet, a moſt reſpectable Writer upon the ſame Subject, and whoſe Book is in every Body's Hands) cites the former *over-ruled and contradicted* Caſe, *as from my Book*; without taking any Notice of my Note at the End of it: And then he immediately recites the ſecond Caſe which does ſo overrule and contradict the former, *without* referring to my ſecond Volume, or taking the leaſt Notice of my having reported it at all. So that it muſt appear, I think, to his Reader, "that I had *only* reported the over-"ruled Caſe; and that *ſome one elſe* had ſet the Public "right, by communicating to them a contradictory Caſe "to

" to that which I had given as an authentic Determina- " tion." At the ſame Time, I ſolemnly proteſt, that I have not the leaſt Suſpicion that this very worthy candid and excellent Writer, (for whom I have the higheſt Eſteem,) had any ill Intention in this accidental Omiſſion: I know him too well, to be capable of imagining any Thing like it. But yet I thought it incumbent upon me to explain the Fact.

CARLETON and HOYLAND-SWAIN.

THE COURT were clear, that the Seſſions were wrong; and that their Order muſt be diſcharged. A Woman can't be removed from her Huſband: As an Authority for which, they referred to the beforementioned Caſe of *St. Michael's* in *Bath*, and *Nunny*.

This is not like the Caſe of the Huſband being *dead*, or having *left* his Wife. Here, the Huſband is alive; *reſides at Hoylandſwain*; follows the Buſineſs of a Cloathdreſſer there; and maintained his Family by it for many Years, till they were taken ill of this temporary Fever, which obliged them to apply for Relief. The Pariſh have had the Benefit of his Labour nine Years. The Man is ſettled in a Houſe, and carries on Buſineſs in this Place. There may be no Buſineſs for a Cloathdreſſer at *Carleton*, at all: Or this Man may have no Acquaintance there. He may ſtarve there, though he could maintain his Family at *Hoylandſwain*. It is a cruel Behaviour.

RULE made ABSOLUTE:
ORDER of SESSIONS QUASHED.

Rex *v.* Inhabitants of St. Cuthberts, Bedford. No. 254.

Saturday 1ſt July 1775.

A Tenant muſt be *rated*, as well as *pay*, in order to gain a Settlement.

MR. *Murphy* moved (on *Tueſday* 20th *June* 1775,) to quaſh an Order of Seſſions which vacates an Order of two Juſtices made for the Removal of *John Meadows* and his Family (particularizing

ST. CUTHBERT'S and ST. JAMES'S CLERKENWELL.

ticularizing them) from *St. Cuthbert's* in *Bedford* to *St. James's Clerkenwell* in *Middlesex*.

The Seſſions Order was ſubject to the Opinion of this Court upon the following Caſe.

Upon hearing the Appeal, after the Appellants had admitted a Settlement in *St. James's Clerkenwell*, they ſet up a ſubſequent Settlement in *Kempſton*; making it appear that the Pauper had *paid* two Shillings demanded of him by *Thomas White*, Son of the then Overſeer of the Poor of the Pariſh of *Kempſton*, by Virtue of a Rate dated the 22d of *June* 1772, not ſigned by Juſtices or any Officer of the ſaid Pariſh of *Kempſton*, or any Pariſhioner thereof: In which Rate, the Name of *John Whiffe*, the Landlord of the Pauper was named, and *not the Name of the Pauper*; neither was any Evidence produced in Court, "that the Pauper was *ever* "*rated* to any Poor Rate in the Pariſh of *Kempſton*."

Mr. *Bearcroft* gave up the Order of Seſſions, as inſupportable; the Man having never been rated.

RULE made ABSOLUTE:
ORDER of SESSIONS QUASHED.

Vide ante, No. 252. S. P. and the ſeveral Caſes there cited and referred to.

Michaelmas

Michaelmas Term

16 Geo. 3. 1775.

Rex *v.* Inhabitants of Clare. No. 255.

MR. *Andrew Pemberton* moved (on *Monday* 13th *November* 1775) to quaſh an Order of Seſſions, which confirmed an Order of two Juſtices made for the Removal of *William Davy* from *Cavendiſh* in *Suffolk* to *Clare* in the ſame County; and alſo the Order thereby confirmed. Wedneſday 22d Nov. 1775.

A SPECIAL HIRING *by the Month*, will not gain a Settlement.

The Caſe ſtated on the Order of Seſſions, was—

That the Pauper, being a Journeyman Miller, at *Michaelmas* 1768 let himſelf to *Elizabeth Stammers* of *Clare* aforeſaid, *by the Month*, at the Wages of eight Shillings a *Month*; and that he was at *Liberty to depart* his ſaid Service at a *Month's Wages* or a *Month's Warning*: And at the Time of his Hiring, it was agreed between the Pauper and the ſaid *Elizabeth Stammers*, "that if "he continued in her Service till Harveſt-time, he ſhould be at "Liberty, *during Harveſt-Month*, to let himſelf to any *other* Per-"ſon he choſe, *for the Harveſt-Month*." The Pauper continued five Years in the Service of the ſaid *Elizabeth Stammers*; and during that time, *conſtantly let himſelf* to ſome Perſon or other, *for the Harveſt*, and *received the common Wages* of eight Shillings from his ſaid Miſtreſs, for the Harveſt-Month in each Year; and *paid her one Moiety* of the Wages earned at ſuch Harveſt, annually and during his Service with the ſaid *Elizabeth Stammers*; but generally at the End of every Month, and ſometimes weekly, received his

CLARE *and* CAVENDISH.

his Wages of eight Shillings a Month, or in that Proportion: And that HE CONSIDERED HIMSELF as a *monthly* Servant, and at Liberty to leave his ſaid Miſtreſs at the End of any Month, paying a Month's Wages, or giving a Month's Warning, according to his firſt Agreement.

Whereupon, this Court [the Seſſions] doth confirm the ſaid Order of Removal made as aforeſaid; ſubject to the Opinion of the Court of King's Bench.

Mr. *Pemberton's* Objection was, that this was *no* Hiring *for a Year*, which is eſſentially requiſite, by 3 & 4 *W. & M. c.* 11. § 7. It is only a Hiring by the *Month*. Rule to ſhew Cauſe.

This Caſe now ſtanding in the Crown-Paper, (*v. ante*, pa. 806.)

Mr. *Mayhew*, who was to have ſhewn Cauſe, gave up the Orders as indefenſible.

Whereupon Mr. *Pemberton's* Rule was made abſolute.

BOTH ORDERS QUASHED.

V. ante, No. 1. and No. 7. and the Caſe of *Putney*, in Mr. *Bott's* Collection, pa. 274. No. 525: (Which Caſe I did not inſert in mine, becauſe it was never determined.)
See alſo, *ante*, No. 202. 266. and pa. 720, 721.

Hilary Term

16 Geo. 3. 1776.

Rex *v.* Inhabitants of Ideford. No. 256.

Saturday 27th Jan. 1776.

An *Apprentice*, running away, cannot gain a Settlement, by ſerving 40 Days, in a *different* Pariſh, without the CONSENT of his *Maſter*.

THE Seſſions confirmed an Order made by two Juſtices for the Removal of *Mary Streete*, Singlewoman, from *Chudleigh* in *Devonſhire* to *Ideford* in the ſame County.

The Caſe ſtated on the Order of Seſſions, was as follows—

Mary Streete, the Pauper, was legally *bound an Apprentice*, by the Officers of *Chudleigh*, to *Philip Matthews* of *that* Place, till twenty-one Years or Day of Marriage; and lived with him there, four Years: When he aſſigned her, by Parol, to *Joſeph Stelliford*, of *Ideford* aforeſaid; with whom ſhe lived ſeven Months; when ſhe ran away from *Stelliford*, and returned to the ſaid Pariſh of *Chudleigh*, and reſided *there* for nine Months, as a *Servant* to *John Hayes* at a public Houſe, WITH THE KNOWLEDGE, but WITHOUT any *expreſs* CONSENT of *Matthews* or *Stelliford*. And *John Hayes did not know* that the Pauper was an Apprentice.

Philip Matthews, the original Maſter, reſided in *Chudleigh*, during the Time that the Pauper lived with *Hayes*; and *frequently ſaw her there:* But during her Reſidence there, applied to *Stelliford* to take her back to *Ideford*; and threatned to put him to Trouble, if he did not.

The Pauper, during the Time ſhe was at *Chudleigh* as aforeſaid, was taken ill; and for Part of the Time, ſo ill in the Workhouſe, that ſhe could not be removed; and was then *relieved by Stelliford*, in the Workhouſe there.

IDEFORD *and* CHUDLEIGH.

She *never returned to Ideford*; but continued, for the laſt two Years of her Apprenticeſhip, in *Chudleigh*, in good Health; where the Apprenticeſhip expired.

This Court [the Seſſions] being of Opinion "that the Pauper "gained NO *Settlement in Chudleigh*, ſubſequent to her living in "*Ideford*," doth therefore *confirm* the Order.

Mr. *Mansfield* moved, on *Tueſday* 28th *November* 1775, to quaſh both theſe Orders. His Objection to them was, "that the Pau-"per's Service at *Chudleigh*, after her Return thither from *Ideford*, "was a Service *under the Apprenticeſhip*." Rule to ſhew Cauſe.

Mr. *Hawtrey*, Mr. *Fanſhaw*, and Mr. *Dunning* now ſhewed Cauſe. They denied that it could be a Service *under* the Apprenticeſhip; in as much as here was *no Conſent of the Maſter:* On the contrary, he *diſſented*. His mere Knowledge of the Fact ſignifies nothing: The * *expreſs Conſent* of the Maſter is neceſſary. To prove "that a mere knowledge of the Fact is not ſufficient; "but that there muſt be the *Conſent* of the Maſter;" they cited the Caſe of *St. Mary Kallendar* in *Wincheſter*, *ante* 275. No. 95 †.

* As to his *expreſs* Conſent, *v.* ante, No. 250.

† See alſo *ante*, No. 95. 174. S. P.

Mr. *Mansfield* endeavoured to make out, that this Reſidence in *Chudleigh* was by the Conſent of her Maſter *Stelliford:* And he manifeſtly conſidered her as his Apprentice, whilſt ſhe reſided there. But

LORD MANSFIELD obſerved, That here is *no Conſent* of the Maſter, either expreſs or implied. His *mere Knowledge* of it does *not imply his Conſent* to it.

Mr. Juſtice ASTON—There muſt be the *Conſent of the Maſter*; in order to the Apprentice's gaining a Settlement in another Pariſh. And he cited the Caſe of the King and the Inhabitants of *Clapham*, *ante*, pa. 267, 268. No. 91. [See alſo the Caſes which I have referred to, at the End of that Caſe.]

THE COURT were unanimous, that both Orders ought to be affirmed.

BOTH ORDERS AFFIRMED.

See the ſeveral Caſes referred to at the End of No. 5. pa. 16.

Rex

Rex *v.* Inhabitants of Bath-Eaſton. No. 257.

Wedneſday Feb. 7th 1776.

A GENERAL HIRING is a *Hiring for a Year.*

TWO Juſtices removed *John Amſbury* from *Mangotsfield* in *Glouceſterſhire* to *Bath-Eaſton* in *Somerſetſhire:* And the Seſſions confirmed their Order; ſtating the Facts.

The Facts ſtated upon the Order of Seſſions were theſe—

That the Pauper is a ſingle Man, and was bred a Barber. That in the Year 1748, he was ſettled at *Bath-Eaſton*, by being Owner of an Eſtate there, of the yearly Value of 20*l.* and living in the Pariſh. That in the Month of *November* 1748, he ſold his Eſtate to one *Samuel Fuller*. That after he had ſo ſold his Eſtate, he quitted *Bath-Eaſton*, and went to *Devizes* in the County of *Wilts*, in order to get Employment as a Barber; and accordingly offered himſelf to one *John Giles* a Barber of the *Pariſh of St. John in ſaid Town of Devizes*; who ENGAGED him into his Service as a *Journeyman-Barber*, and agreed to give him Meat Drink and Lodging, but would not give him any Wages: In lieu of which, he was to have the *Chriſtmas*-Boxes. The Pauper accepted theſe Terms: But nothing further paſſed at that Time; and *no particular or preciſe Time* was ſtipulated or agreed on between the Maſter and him, that he ſhould *ſerve*. That thereupon, Pauper entered into his Service, and lived with ſaid *Giles*, in the Pariſh of *St. John* in ſaid Town of *Devizes*, for *four Years:* During which Term, he was found with Meat Drink and Lodging by his ſaid Maſter in his own Houſe; and he, during all thoſe Years, received the *Chriſtmas*-Boxes that were given by the Cuſtomers; and thought himſelf at Liberty to leave his Maſter when he thought proper. The Pauper then left his ſaid Maſter, and went to *Mangotsfield*, and ſerved Mr. *John Bedford* (who keeps a public Houſe there) in his Stable: And ſaid *John Bedford* agreed to find him Meat Drink Waſhing and Lodging in his own Houſe; but he was not to give him any other Wages than what he might receive as Perquiſites of the Stables, from Horſes that came there. But *no particular or preciſe Time* was ſtipulated or agreed on that he ſhould *ſerve:* And Pauper *apprehended* that his Maſter might have turned him off, or he might have gone away from him, at their Pleaſures. Nevertheleſs, there was *no Agreement* between them for that Purpoſe.

BATH EASTON and MANGOTSFIELD.

That from the Time Pauper began to ſerve ſaid *John Bedford*, to the Time at which he left him, was *ſixteen Years*.

That during ſaid Time of 16 Years, he left ſaid *John Bedford*, ſeveral Times, at his Pleaſure: But from the Time of his firſt going into the Service, he was with ſaid *John Bedford two Years and upwards*, without leaving him at all; and at the End of the ſaid Term of 16 Years, he was with ſaid *John Bedford* for *three Years together*, without Interruption; and during the whole Time he lived with ſaid *John Bedford*, he was found by him in Meat Drink Waſhing and Lodging.

Mr. *Clifford* moved, on *Wedneſday* 31ſt *January* 1776, to quaſh theſe Orders; and had a Rule to ſhew Cauſe; the *general* Hirings being ſubſequent to his original Settlement at *Bath-Eaſton*.

V. ante, No. 107. *Rex* v. *Inhabitants of Wincaunton*, H. 24 G. 2. 1750. pa. 299. to 301. and the Caſes referred to at the End of it. See alſo the Caſe of the Inhabitants of *Stockbridge*, *ante*, No. 236. pa. 759. to 761.

Mr. *Bearcroft* was now to have ſhewn Cauſe: But he owned that he could not ſupport the Orders.

RULE made ABSOLUTE:
BOTH ORDERS QUASHED.

Eaſter

Eaſter Term

16 Geo. 3. 1776.

Rex *v.* Inhabitants of Loweſs. No. 258.

Wedneſday 1ſt May 1776.

Where the *Service* is in *ſeveral Pariſhes*, the Settlement ſhall be in the Pariſh, where the Servant *laſt* reſides for 40 Days; which need not be *ſucceſſive*.

TWO Juſtices removed *Edward Morgan* from the Pariſh of *Loweſs* in the County of *Radnor* to the Pariſh of *Lanſtephan* in the ſame County. Upon Appeal, the Seſſions quaſh the Order; ſubject to the Opinion of this Court, upon the following Caſe.

Edward Morgan was hired for a Year to one *John Williams* of the Pariſh of *Lanſtephan*, where his Maſter occupied his own Eſtate. He continued with his Maſter in *Lanſtephan*, till ſome Time before *St. Peter's*-tide; when his Maſter and Family removed to *Loweſs*, in which Pariſh his Maſter rented another Farm. That he continued with his Maſter in *Loweſs*, till the 16th of *January* following, altogether; when his Maſter with his Family, removed to the Pariſh of *Lanſtephan*. The Maſter, after his Removal to *Lanſtephan*, conſtantly reſided there: But the Pauper was ſent by his Maſter back to *Loweſs*, to thraſh and look after his Maſter's Cattle. The Pauper ſtaid in *Loweſs*, upon his Maſter's Buſineſs, two or three Nights and Days, and eat and lodged there; and then returned again to *Lanſtephan* for two or three Days or a Week at a Time, and eat and lodged there, and then returned again to *Loweſs* in like Manner as aforeſaid; and ſo continued *between* the ſaid Pariſhes, to the End of his Year, which was the 17th of *May* following. The Pauper is very poſitive he *never continued forty Days together* in *either* of the ſaid Pariſhes, after the ſaid

Lowess and Lanstephan.

ſaid ſixteenth of *January*: But that he lived and reſided as aforeſaid, *more than forty Days in the whole*, in *each* Pariſh. That he *verily believes* he reſided moſt Part of the latter Part of his Service, in LANSTEPHAN, and *lodged there the laſt Night*; and from thence went to *Lowes's* in the Morning, and took ſome Cattle of his Maſter's from thence to the *Hay-Fair*, where the Pauper finiſhed his Service.

Mr. *Bearcroft* argued for quaſhing this Order of Seſſions; for that the Pauper's Settlement was in *Lanſtephan*.

Mr. *Lewis* argued in Support of it; and obſerved that it is not poſitively alledged "that the Pauper lodged the laſt Night in "*Lanſtephan*": He only verily believed that he did.

THE COURT held him to be laſt legally ſettled in *Lanſtephan*.

ORDER of SESSIONS QUASHED.

Vide ante, No. 82. *Doug.* 633. S. P.

No. 259.

Rex *v.* Inhabitants of St. Iſſey.

Saturday 11th May 1776.

Paying the *Land-Tax*, under Circumſtances which imply an *Aſſeſſment*, will gain a Settlement.

TWO Juſtices removed *Richard Congden* and *Honour* his Wife from the Pariſh of *St. Allen* in the County of *Cornwall*, to the Pariſh of *St. Iſſey* in the ſame County. Upon Appeal to the Seſſions, they ſtate the following Caſe—

That about 25 Years ſince, the Pauper *Richard Congden*, together with the ſaid *Honour* his Wife, being then legally ſettled in the Pariſh of *St. Iſſey*, went into the Pariſh of *St. Allen*, and there lived with his Father in Law, in a Dwelling-houſe, Part of a ſmall Tenement of about *L.* 2 : 10 : 0 *per Ann.* belonging to the ſaid Father in Law; who permitted the Pauper and his ſaid Wife to live and reſide therein, till his Death, which happened about 13 Years ago, without paying any Rent for the ſame. That on the Death of his ſaid Father in Law, he the Pauper, in right of his ſaid Wife as one of his Daughters and next of Kin of her ſaid Father, *continued in Poſſeſſion of one Moiety of the ſaid Tenement*; and that his Brother in Law, in Right of his ſaid Wife, the other Daughter of the ſaid Father in Law and only Siſter of the ſaid

Paupers Wife, became intitled to the other Moiety; but that NO ADMINISTRATION was ever taken of the Effects of the ſaid Father in Law. That the Pauper, ſoon after the Death of his Father in Law, *purchaſed* of his ſaid Brother in Law *the other Moiety* of the ſaid Tenement, for the Remainder of the Term therein then determinable on one Life, for the ſum of 3 *l.* That until the Year 1762 or 1763, he never paid any Land-Tax or other Rates or Taxes for the ſaid Tenement: But that in one of thoſe Years there was an *Alteration made on the* LAND-TAX *Rate* of the ſaid Pariſh, upon a new Valuation made of the Lands therein; and that about three Months after the making of the ſaid new Rate, the Collectors of the Land-Tax of the ſaid Pariſh came to the Pauper's Houſe in the ſaid Pariſh, and *demanded* of him 3 *s.* and 4 *d.* or 3 *s.* and 10 *d. for the Land-Tax* of the ſaid ſmall Tenement then in his Poſſeſſion as aforeſaid: And upon the Pauper's refuſing to pay the ſaid Land-Tax ſo demanded, the ſaid Officers SHEWED HIM A PAPER WRITING, in order to inforce the Payment thereof by the ſaid Pauper, and *read over the Sum he was to pay*; but he ſtill refuſing to pay the ſaid Tax ſo demanded of him, inſiſting "that the little Tenement that he poſſeſſed was Part of "the Tenement called *Keaſt's* Tenement", and declaring "that "ſaid *Keaſt* ought to pay the Land-Tax of the whole Tenement". The Officers ſoon after came and *took his Cow as a* DISTRESS *for the ſame*. That the Pauper then went and paid the ſum demanded of him for the Land-Tax as aforeſaid. And that he continued in the Poſſeſſion of the ſaid Tenement for about four or five Years after the Tenement fell into Hand; and during ſuch four or five Years he paid to the reſpective Collectors of the ſaid Pariſh for the Time being, the like Yearly Sum for the Land-Tax of the ſaid Tenement; and then quitted the ſame. The *Church and Poor Rates* of the ſaid Pariſh were produced to this Court, [the Seſſions] in Purſuance of a Notice: And it was admitted "that the Pau-"per was *never rated* in either of *them*." And *no Land-Tax Rate or Aſſeſſment* was PRODUCED, nor any *Duplicate* thereof; nor did it appear that any NOTICE *or* APPLICATION was made or given by the Appellants to the Commiſſioners or Aſſeſſors of the Land-Tax, or at the Office of the Clerk of the Peace, or to any other Perſon except to the *Churchwardens and Overſeers* of the Poor of the Pariſh of *St. Allen*, "*to produce* the Land-Tax Aſſeſſments "or Duplicates," to ſatisfy this Court [the Seſſions] that the Pauper was *rated therein*. It is therefore ordered by this Court [the

St. Issey and St. Allen.

[the Sessions] that the said Order be, and the same is hereby confirmed, &c.

Mr. *Dunning* moved (on *Friday* 3d *May* 1776) to quash these Orders; as the Settlement of the Paupers appeared, upon the Case stated, to be at *St. Allen's*, and *not* at *St. Issey's*.

Mr. *Mansfield* and Mr. *Buller* now shewed Cause. They argued that there was no Proof of having gained a Settlement in *St. Allen's*. There was no sufficient Evidence PRODUCED *to the Sessions*, of this Man's having been *rated* to the Land-Tax there: nor were the legal Means used, in order to inforce the Production of the proper Evidence that might have satisfied that Court "that "the Pauper was ever rated in any Assessment to the Land-Tax." The Evidence stated does not prove his having been *rated:* The Officers shewed him a Paper-Writing, and read over a Sum. But the *Assessment itself* ought to have been *produced* to the Sessions; or, at least, Proof of Application to the proper Persons who could have produced it. But

LORD MANSFIELD treated it as a quite clear Case; and that there could not be the least Doubt of this Man's having been *rated* to the Land-Tax. The Officers shewed him a Writing, in order to inforce the Payment: They afterwards distrained upon him for it. The Justices were not to presume that this was done, without his being rated: They could not doubt of his being rated. What Rule of Law obliges the original Rate to be produced to them?

Mr. Justice ASTON and Mr. Justice WILLES were equally clear.

Mr. Justice ASHHURST was absent.

ORDERS QUASHED.

No. 260.

Rex *v.* Inhabitants of Bilsdale Kirkham.

Saturday 18th May 1776.

A Settlement may be gained by a Tenement of the *yearly Value* of 10*l.* though the *Rent* of it be less.

THE Sessions confirmed an Order of two Justices made for the Removal of *Sarah* the Widow of *Thomas Wilson*, and *John* her Son, from the Township of the West Side of *Bilsdale* in

the

BILSDALE KIRKHAM *and* The *Weſt Side* of BILSDALE.

the North Riding of *Yorkſhire*, to the Townſhip of *Bilſdale Kirkham* in the ſame Riding. They ſtated the Caſe ſpecially; *viz.*

That in *May* 1772, *Thomas Wilſon* married *Sarah* the Pauper; and came to reſide in the Weſt Side of *Bilſdale*, under a *Certificate from Bilſdale-Kirkham*. That at their Marriage, the Pauper was poſſeſſed of a Farm ſet in the *Weſt Side of Bilſdale*, as Tenant from Year to Year to *Thomas Duncombe* Eſq; at the yearly Rent of *L.* 4 : 1 : 0. That after their Marriage, ſaid *Thomas Wilſon* entered upon ſaid Farm, and occupied the ſame till his Death, in *November* 1774.

That after his Death, the Pauper occupied the ſame Farm till *April* 1775, when ſhe was removed.

That upon hearing the Appeal, Witneſſes on Behalf of the Appellants were offered, to prove that the ſaid Farm, when occupied by ſaid *Thomas* and the Pauper was of the REAL *annual* VALUE of *L.* 15 : 0 : 0, and that it has ſince been *really let for that Rent*, to another Tenant.

But the Court being of Opinion "that ſuch Evidence was "*not admiſſible*; and that their Judgment ought to be wholly "guided by the *Rent* it was then *actually let for*"; refuſed to hear it.

It further appeared in Evidence, that *John Wilſon*, the Father of *Thomas Wilſon*, was Tenant from Year to Year of another Tenement, under Mr. *Duncombe*, let at the yearly Rent of *L.* 14 : 10 : 3 in *Bilſdale-Kirkham*. That one *George Hoggard* had lent to ſaid *John Wilſon* 57 *l.* For Security for Repayment, the Name of *George Hoggard* was, by the indulgent Cuſtom of Mr. *Duncombe* to his Tenants, inſerted in the Rent-Roll with the Name of ſaid *John Wilſon*. That ſaid *George Hoggard* entered upon and occupied the *principal* Part of ſaid Farm: And that ſaid *John Wilſon* continued in the Poſſeſſion of the *Reſidue*, till his Death, which happened about ten Years ago.

That ſoon after his Death, one *William Garbut* paid off the ſaid 57 *l.* to ſaid *George Hoggard*; and lent the further Sum of 3 *l.* to *Johanna* the Widow of ſaid *John Wilſon*: Upon which, the following Agreement, dated 28th *October* 1765, was made and ſigned by ſaid *William Garbut* and *Johanna*, that is to ſay, "Whereas "*Johanna Wilſon* was poſſeſſed of the Tenant-Right of a Farm "in *Bilſdale*, called *Grange Green*, under *Thomas Duncombe* Eſq; "and that *George Hoggard* was ſet-in Tenant, for ſecuring 57 *l.* "And whereas *George Hoggard* hath called in the ſame, ſhe the

Bilsd ale Kirkham and The *West Side* of Bilsdale.

" ſaid *Johanna* hath requeſted *William Garbut* to advance it; " which he hath agreed to do, on the Day which *Hoggard's* next " Rent is paid; and to be ſet-in Tenant for ſecuring ſame, inſtead " of ſaid *George Hoggard*; and that ſaid *Johanna Wilſon* agrees " that ſaid *William Garbut* ſhall have ſaid Farm as a ſecond Te- " nant to enter thereon at *Lady*-Payment (excepting certain Parts, " of the yearly Value of 5 *l.*) with the Conſent of the ſaid *Thomas* " *Duncombe* or his Agents, and paying the Lord's Rent; and the " Intereſt of ſaid 57 *l.* to ſink and not to be paid for ſo long Time " as the ſaid *William Garbut* ſhall enjoy the Farm; ſaid *William* " *Garbut* ſhall never be diſcharged of the Farm by ſaid *Johanna* " *Wilſon* or any of her Children, unleſs they or ſome of them can " pay ſaid 57 *l.* And it is further agreed, that *Thomas* the el- deſt Son of ſaid *Johanna Wilſon* ſhall be ſet-in Tenant for the Farm."

That at *Michaelmas* following, in Purſuance of ſaid Agreement, ſaid *William Garbut* and *Thomas Wilſon* were admitted Tenants to ſaid Farm. That ſaid *William Garbut* occupied the ſame (except as excepted in the above Agreement.) That at the Time of making ſaid Agreement, ſaid *Thomas Wilſon* was aged 14 Years. That in 1772, ſaid *Johanna* gave up the Poſſeſſion of ſaid ex- cepted Part, to *William Garbut*; he paying her, for the ſame, 5 *l.* yearly.

That after ſaid Admiſſion, ſaid *William Garbut* paid the Rent to Mr. *Duncombe*, and always took Receipts for ſame in the joint Names of himſelf and ſaid *Thomas Wilſon*: In ſome of which Receipts it is ſtated to be received " of *Thomas Wilſon* " and *William Garbut*, for Security of 60 *l.*" And the Entries were ſo made in the Rental.

That in *February* 1773, ſaid *Thomas Wilſon* and *William Gar- but* being together, the following Memorandum was ſigned by ſaid *Thomas Wilſon*, and agreed to by ſaid *William Garbut*—" 24th " *February* 1773. Whereas *William Garbut* the younger is at pre- " ſent Tenant to a Farm in *Bilſdale*, called *Grange-Green* Farm; " and that he hath lent me 20 *l.* upon my promiſſory Note; and " that in Conſideration thereof, I promiſe and agree with him " ſaid *William Garbut*, that he may continue Tenant to the ſaid " Farm, unleſs I have Occaſion to occupy it myſelf. And I fur- " ther promiſe and agree, that I if cannot repay to ſaid *William* " *Garbut*, ſaid Note-Debt and Intereſt, that then ſaid *William* " *Garbut* ſhall have all my Right Title and Intereſt in ſaid Farm,

" with the Conſent of *Thomas Duncombe* Eſq; or his Agents. " And if it ſhould happen that I ſhould come to live upon ſaid " Farm myſelf, then I hereby promiſe that he the ſaid *William* " *Garbut* ſhall and may have and rent the Farm I now live upon, " called *Lockton*-Farm, at a reaſonable Rent."

That ſaid *William Garbut* continued in Poſſeſſion of ſaid Farm; paid the Rent; and took Receipts, as above; until the Death of *Thomas Wilſon*.

Upon which Evidence, the Court, being of Opinion " that ſaid " *Thomas Wilſon* did *not* gain a Settlement for himſelf and Fami- " ly in the Weſt ſide of *Bilſdale*," confirm the Order; ſubject to the Opinion of the Court of King's Bench.

Mr. *Chambre* moved, on *Wedneſday* 31ſt *January* 1776, to quaſh theſe Orders, as being grounded upon an erroneous Opinion of the Juſtices. For, the Seſſions ought to have *admitted the Evidence* which was offered to prove " that the Farm, when occu- " pied by the Pauper's Huſband *(Thomas Wilſon)* was of the *real* " *Value* of 15 *l.* a Year:" And their Judgment ought to have been guided by the *real Value*, and *not* wholly by the *Rent* it was actually let for. He cited the Caſe of *St. Matthew's Bethnall-Green*, *(ante*, No. 185.) where Lord Mansfield ſaid—" Clearly, the " Rent is not material: It is the Value, that is material. And " ſo was the Caſe of *South Sydenham* and *Lamerton*." *(v. ante*, pa. 577.) In which, the Court concurred with his Lordſhip. Mr. *Chambre* had a Rule to ſhew Cauſe.

Mr. *Dunning* ſhewed Cauſe, on *Saturday* the 10th of *February* 1776. He argued, that the Evidence offered was inapplicable to the Point in Queſtion: And therefore the Seſſions properly rejected it. The Huſband was a Certificate-Man. He married a Woman poſſeſſed of a Farm let at the Yearly Rent of *L.* 4: 1: 0 as Tenant from Year to Year. He can't be conſidered as gaining a Settlement by " taking a Leaſe of a Tenement of the yearly " Value of ten Pounds:" Which is what the Statute requires. [*v.* 9 & 10 *W.* 3. *c.* 11.] If the Value is to be at all conſidered in this Caſe, it muſt be the Value of it at the *Time when the Wife took* it: The *ſubſequent Value* is out of the Caſe. Whereas the Evidence here ſtated to have been offered, related only to its Value *when occupied by the Huſband*, and what it had been let for *ſince*, to *another Tenant*. Such Evidence was therefore not admiſſible. However, if it ſhall be eſteemed admiſſible, it muſt be ſent back, for the Caſe to be re-ſtated. As to the Farm called

BILSDALE KIRKHAM and The *West Side* of BILSDALE.

Grange-Green—*Thomas Wilson* never was in Poſſeſſion of it, or received any Profit from it. It was incumbered, over and over again. He had at moſt, only an Equity of Redemption in it: And he never was able to pay it off.

Mr. Chambre, on the contrary, argued, that the marrying a Wife poſſeſſed of a Leaſe was *taking a Leaſe*, within the Meaning of the Act of Parliament; that the Evidence to prove the *real Value* ought to have been admitted; and that even the *L.* 4: 1: 0 a Year *added* to the joint-Tenancy of *L.* 14: 10: 3 a Year, would amount to *more* than 10 *l.* a Year in mere *Rent*. And theſe two may be *connected*; though he did not reſide upon the latter.

LORD MANSFIELD anſwered him, as to the Joint-tenancy of *Grange-Green*, that *Thomas Wilſon* and *William Garbut* appear to be *Mortgagor* and *Mortgagee*, rather than *Joint-tenants*: And the true Way of eſtimating the Value of his Intereſt in it, is the Surplus after redeeming the Mortgage, and paying off the Debt.

Mr. Juſtice ASTON added an Obſervation, that by their Agreement in *February* 1773, *Garbut* was conſidered as Tenant, and was to have the *whole*, if *Wilſon* could not repay him what he had lent him upon his promiſſory Note: Which he had *not* done. The Reaſoning, therefore, from *Wilſon's* Intereſt in *this* Farm, will not hold.

As to the *other Farm*, of which the Wife was in Poſſeſſion when *Thomas Wilſon* married her—

LORD MANSFIELD thought the Seſſions wrong, in refuſing to hear the Evidence to prove the *real Value*, when occupied by *Thomas Wilſon*. In a *Leaſe at Will*, every new Year is conſidered as a *new Leaſe*. The Value of this Farm, in any one Year when this Man held it, is material. The *ſubſequent* Value is immaterial. It ought to go back, in order to fix what the Value of it was, at any Time *when he held it*.

Mr. Juſtice ASTON alſo thought that the Evidence ought to have been heard. He compared the preſent Caſe to that of *Burclear* and *Eaſt Woodhey*, in 1 *Stra.* 163, 164. where the Deſcent of a Copyhold to the Wife of a Certificate-Man was holden to give him a Settlement: though not one of the two Exceptions mentioned in the 9 & 10 *W.* 3. *c.* 11. being caſt upon him by Act and Operation of Law: And it can't be ſuppoſed that the Act of Parliament intended to put Certificate Perſons in a worſe Condition than other Perſons taking by Deſcent. Now this Man came to this Poſſeſſion, by Operation of Law.

THE

THE COURT held, that if this Farm was of the Value of ten Pounds a Year, in any one Year, *when Thomas Wilſon* held it, it was ſufficient to gain him a Settlement: But the Value of it *now*, is not material.

BILSDALE KIRKHAM *and* *The Weſt Side of* BILSDALE.

SENT down, to be RE-STATED.

Afterwards, it being re-ſtated "that the Tenement *was* "*above the Value* of ten Pounds a Year;" and

Mr. *Chambre* having renewed his Motion for quaſhing, and obtained a freſh Rule to ſhew Cauſe;

Both Orders were now quaſhed, without Oppoſition.

BOTH ORDERS QUASHED.

Trinity Term

16 Geo. 3. 1776.

No. 261.

Rex *v.* Inhabitants of Portſea.

Tueſday 11th June 1776.

An Agreement, by the *Father* of an Apprentice, to provide Neceſſaries for his Son, in Conſideration of a weekly Sum to be paid him by the *Maſter*, is not within the 8 *Ann*, c. 9. *ſ.* 45. And, *parol* Evidence cannot be admitted in Contradiction of a *Deed*.

THE following Order was confirmed by the Seſſions, upon the Evidence hereunder recited.

Upon Appeal of the Pariſhioners of *Portſea* in the County of *Southampton*, from an Order or Warrant of *Richard Naſh* and *William Mill Leeves* Eſqrs, two of his Majeſty's Juſtices of the Peace for the County of *Suſſex*, for removing *Samuel Rance* and *Elizabeth* his Wife, and *John* and *William* their Infant Children, from *Littlehampton* in the ſaid County of *Suſſex* to *Portſea* aforeſaid, the General Quarter-Seſſions of *Suſſex* confirm the Order of the two Juſtices; ſubject to the Opinion of the Court of King's Bench upon the following Caſe, *viz.*

On the Part of the Reſpondents, an Indenture of Apprenticeſhip duly executed by *Thomas Rance* the Maſter of the Pauper, as follows, " This Indenture witneſſeth that *Samuel Rance*, Son of " *Thomas Rance* of *Portſea* in the County of *Southampton* Labourer, " of his own free Will, and by and with the Conſent of his Fa- " ther, as is teſtified by the ſaid Father's ſigning and becoming a " Party hereto, doth put himſelf Apprentice to *Thomas Rance* of " *Portſea* aforeſaid Labourer, his Executors Adminiſtrators and " Aſſigns, to learn his Art, and with him after the Manner of an " Apprentice to ſerve, from the firſt Day of *January* laſt paſt, " unto the full End and Term of ſeven Years from thence next " following,

" following, to be fully complete and ended: During which " Term, the ſaid Apprentice his ſaid Maſter faithfully ſhall ſerve, " his Secrets keep, his lawful Commands every where gladly do. " He ſhall do no Damage to his ſaid Maſter, nor ſee to be done of " others; but to his Power ſhall let, or forthwith give Warning " to his ſaid Maſter of the ſame. He ſhall not waſte the Goods " of his ſaid Maſter, nor lend them unlawfully to any. He ſhall " not commit Fornication, nor contract Matrimony within the " ſaid Term. He ſhall not play at Cards Dice Tables or any o- " other unlawful Games, whereby his ſaid Maſter may have any " Loſs with his own Goods or others, during the ſaid Term, " without Licence of his ſaid Maſter. He ſhall neither buy nor " ſell. He ſhall not haunt Taverns or Play-Houſes; nor abſent " himſelf from his ſaid Maſter's Service, Day or Night, unlaw- " fully; but in all Things, as a faithful Apprentice he ſhall be- " have himſelf towards his ſaid Maſter and all his, during the ſaid " Term. And the ſaid Maſter, in Conſideration of the ſaid Ap- " prentice's faithful Servitude, his ſaid Apprentice in the Art of a " Rope-maker, which he now uſeth, by the beſt Means that he " can, ſhall teach and inſtruct, or cauſe to be taught and inſtruct- " ed. Sufficient *Meat*, *Drink*, *Apparel* of all Kinds, *Phyſic*, " *Surgery*, and *Lodging*, and *all other Neceſſaries*, during the ſaid " Term, to be *found and provided* for the ſaid Apprentice BY THE " SAID FATHER: Which the ſaid Father, for himſelf his Exe- " cutors and Adminiſtrators, doth *covenant and agree* to find the " ſaid Apprentice, during the ſaid Term. For *which Purpoſe*, " the ſaid *Maſter is to allow* him or them the Sum of four Shil- " lings *per* Week, weekly, during the ſaid Term. And for the " true Performance of all and every the ſaid Covenants and A- " greements, either of the ſaid Parties bindeth himſelf unto the " other, by theſe Preſents. In Witneſs whereof the Parties above- " named to theſe Indentures interchangeably have put their " Hands and Seals the 29th Day of *May* in the 32d Year of the " Reign of our Sovereign Lord *George* the 2d, by the Grace of " God of *Great Britain France* and *Ireland* King, Defender of the " Faith, in the Year of our Lord 1759. The Mark of ⋈ " *Samuel Rance*. O. The Mark of ⋈ *Thomas Rance*. O. " Sealed and delivered (being firſt duly ſtamped) in the Preſence " of *William Cudmore*, *James Ruſſel*."

MEMO-

PORTSEA and LITTLE-HAMPTON.

"MEMORANDUM—It is covenanted and agreed, before the "Sealing and Delivery hereof, that if the within named Ap- "prentice ſhall abſent himſelf the Service of the ſaid Maſter, or "negligently loſe any Time, (Sickneſs or Lameneſs excepted,) "then the Payment of the ſaid four Shillings *per* Week, or the "proportionable Part thereof is to be deducted for the ſame; "and the ſaid Father, his Executors and Adminiſtrators, is to "make good or pay the Damage thereby ſuſtained, to the ſaid "Maſter.

"Borough of *Portſmouth*—Enrolled 23d *October*, 1762, by me "*George Huiſh*, Town-Clerk, and Clerk of the Peace."

THE INDENTURE was *given in Evidence:* Which was objected to by the Appellants, becauſe the DUTY *had not been paid* for the *Lodging*, *Board*, *Phyſic*, and *Surgery*, covenanted to be *found by the Father* of the ſaid Apprentice; and becauſe the Indenture had not been ſtampt with the additional Stamp denoting the 6*d.* or 12*d.* in the Pound, agreeable to the 8th and 9th of *Ann.* To which it was anſwered by the Counſel for the Reſpondents, "that the "4*s.* *per* Week mentioned in the ſaid Indentures to be paid by "the Maſter was an *Equivalent*; and the *additional Stamp*, *unne-* "*ceſſary*:" And the Indenture was *admitted in Evidence.*

And it further appeared in Evidence, That the Pauper ſerved his ſaid Maſter *Thomas Rance under the ſaid Indenture*, for three Years and an Half, in the Pariſh of *Portſea.*

The Appellants then called *Thomas Rance*, the Maſter: Who was aſked whether a *parol Agreement* was not made, at the Time of ſigning the ſaid Indenture, between him and the Father of the ſaid Apprentice, "That he the Maſter *ſhould not pay*, for the *firſt* "*two Years* of the Apprenticeſhip, the 4*s.* *per* Week covenant- "ed in the Indenture to be paid to the Father." But the Counſel for the Reſpondents objected to the putting of the Queſtion to this Witneſs; becauſe it tended to *contradict that Deed which he had executed.* Whereupon, the Court determined, "this Que- "ſtion ſhould *not* be aſked."

Harry Peckham.
G. Courthope.

Mr. *Chambre* moved, on *Friday* 3d *May* 1776, to quaſh theſe Orders. He urged the two Objections mentioned in the Order of Seſſions; *viz.* 1ſt. That the Indenture ought not to have been admitted in Evidence; being void by 8 *Ann. c.* 9. and not available

to

to any Purpoſe whatſoever: (See Sections 32, 36, 39, & 45.) 2d. That the Maſter ought to have been aſked the Queſtion, and to have anſwered it. He had a Rule to ſhew Cauſe.

Mr. *Manſfield* now ſhewed Cauſe. 1ſt, He denied that the Father's "finding Meat, Drink, Apparel, Phyſic, Surgery, and, "Lodging, and all other Neceſſaries for his Son, during his Ap-"prenticeſhip," could be taken to be either a "direct or indi-"rect GIVING, *aſſigning, conveying, delivering, contracting for*, or "*ſecuring* any Thing or Things, to or for the Uſe or Benefit of "the Maſter;" which are the Words of the 45th Section: And therefore no Duty is to be paid for it, nor does it come within any of the Penalties of that Statute. Conſequently, no Stamp was neceſſary for it; nor is the Indenture void for Want of Stamp or Payment. It is ſo far from being a Thing *given* to the Maſter for his *own Uſe or Benefit*, that the Maſter is in Effect the Perſon who finds all theſe Things for the Apprentice: For the Maſter, "*for* "THIS *Purpoſe*," allows the Father an EQUIVALENT; namely, "four Shillings *per* Week, weekly, during the Term." 2dly, If the Maſter had been permitted to have anſwered the Queſtion which the Counſel for the Appellants would have aſked him, he might have got rid of his own Agreement, contrary to what he had covenanted under his Hand and Seal.

Mr. *Bearcroft* and Mr. *Peckham* argued on the other Side. They inſiſted that the Indenture was *void* by the before mentioned Statute of 8 *Ann. c.* 9. This Finding all theſe Things by the Father, which the Maſter ſhould have provided, though it was not, ſtrictly ſpeaking, Money; yet it was *Money's-worth:* It was to the *Benefit* of the Maſter, who was bound by Law to find them for his Apprentice. So far as this takes off the Burden from the Maſter, it is an Advantage to him, and a Benefit within the 45th Section of this Act: And therefore a Duty ought to be paid in Proportion to the *Value* of it, (whatever that Value may be,) both within the Words and Reaſon of this Statute. And they denied that the four Shillings a Week, which the Maſter was to allow to the Father, could be conſidered upon the Foot of an *Equivalent*. They cited a Caſe from Mr. *Bott's* Book, Title "Apprentices", pa. 155. No. 281. *Pennington* v. *Sudall*, *H.* 10 *G.* 3. [Which was a Caſe not unlike to the preſent one; but received no Determination.]

PERTSEA *and* LITTLEHAMPTON.

As to the 2d Objection—They ſaid, that the Maſter was not eſtopped by his Deed under his Hand and Seal; but ought to have anſwered the Queſtion. It was *not his own* Caſe; but the Caſe of a *third Perſon*. And he was not liable to any Penalty inflicted by the Act of Parliament: For, the Time limited by it (*v.* § 35.) is not yet expired. If he had been permitted to anſwer the Queſtion, his Anſwer would have been (as the Fact was) "that it was *not* to be paid for the firſt two Years." And if ſo, it could not have been an *Equivalent*, beyond all Doubt. Indeed, neither the Quarter-Seſſions nor this Court can determine "whether the whole is an Equivalent, or not." There is, at the Stamp-Office, a Proper Officer to eſtimate and ſettle Matters of this Kind.

THE COURT were unanimous upon both Points. As to the former, there was Nothing before them to ſhew that the four Shillings a Week was *not* an Equivalent: And why ſhould it not be ſo? It *might* be an ample one. They were not to preſume "that it was *not* an Equivalent." It appears to be allowed by the Maſter to the Father *for the Purpoſe* of thus providing for his Son. The cited Caſe of *Pennington* and *Sudall* is no Authority: The Point was not determined. The Court was glad to be relieved of it by Mr. *Wallace's* Offer.

Mr. Juſtice ASTON hinted, that the 45th Section of this Act, which ſays "that where any Thing or Things, *not being* "*lawful Money of Great Britain*, ſhall directly or indirectly be "given," means *ſuch* other Equivalents as a Horſe, or other valuable Thing of that Sort; *not* ſuch an Agreement as this is, "to provide Neceſſaries for a Son." *

As to the ſecond Point, they All held, that the Maſter was *not* bound to anſwer the Queſtion which the Appellant's Counſel put to him.

RULE DISCHARGED:
BOTH ORDERS AFFIRMED.

* *Vide ante*, No. 48.

Rex

Rex *v.* Inhabitants of Kingſweare. No. 262.

Saturday 27th June 1776.

A *parol* Binding will not gain a Settlement by APPRENTICESHIP.

UPON an Appeal to the Quarter-Seſſions of the County of *Devon*, by the Churchwardens and Overſeers of the Poor of the Pariſh of *Holberton* in the ſaid County, from an Order of two Juſtices made for the Removal of *John Sherrers* and *Jane* his Wife from the Pariſh of *Kingſweare* in the ſaid County to the ſaid Pariſh of *Holberton*, The following Caſe was ſtated at the Seſſions.

That the Pauper had a derivative Settlement in *Holberton:* And that *John Kingſton*, the Pauper's Grandfather, went with the Pauper to *William Cholwich* of the Pariſh of *Halwell*, and deſired the ſaid *Cholwich* to take the Pauper as his Apprentice. That the ſaid *Cholwich* ſaid, "he would take him as his Apprentice; and "would give him Meat Drink Waſhing and Lodging, until he "was twenty-one." The ſaid Pauper, being then ſixteen Years of Age, came and lived with the ſaid *Cholwich* in *Halwell* accordingly, until he was 21. That NO INDENTURES were executed, or talked of by any of the Parties. That the Pauper being frequently aſked "Whether he conſidered himſelf as an Appren-"tice, or not," generally replied "that he could *not* be an *Ap-"prentice*; becauſe there was *no Indenture:*" But, once anſwered to that Queſtion, "that he looked upon himſelf as a *Servant.*" But the Maſter being aſked, ſaid "he always conſidered him as "an *Apprentice.*" That when he was nineteen, he went away from ſaid *William Cholwich*, and left him for one Day; and returned again, at the Perſuaſion of his Uncle, the Day following; and told his Maſter "he would have Cloaths, as other Appren-"tices had;" (which his Maſter agreed to;) and then continued with his ſaid Maſter till he was 21 Years of Age.

The Court [of Seſſions] being of Opinion "that the Pauper "is *not* ſettled in the ſaid Pariſh of *Holberton*," doth therefore *vacate* the ſaid Order: And the ſame is hereby vacated accordingly.

Mr. *Fanſhaw* moved, on *Saturday* 27th *June* 1776, to quaſh the Order of Seſſions, and affirm the original Order. He objected to the Pauper's having gained a Settlement in *Halwell* by this Apprenticeſhip; there never having been any *Indenture.*

Mr. *Hawtrey* was now to have ſhewn Cauſe: But he candidly acknowledged that it could not be defended.

KINGS-WEARE *and* HOLBERTON.

Mr. Juſtice ASTON ſaid, it could not be ſupported, either by having gained a Settlement in *Halwell* as an Apprentice, or as an hired Servant.

ORDER of SESSIONS QUASHED: ORIGINAL ORDER AFFIRMED.

Vide ante, No. 94, 102, 104, 173, 203, 227. S. P. But See the Statute 31 G. 2. *c.* 11.

It will not be improper to add one other Caſe; which, though it does not ſtrictly come within the propoſed Plan of this Collection, is nevertheleſs very nearly connected with it; and of which it is very convenient that Gentlemen in the Commiſſion of the Peace ſhould be apprized. They cannot well be ſo yet; becauſe the Determination of it was ſo very recent, as to have been ſubſequent even to the very laſt of the Caſes above reported; namely, on the laſt Day but one, of laſt Term. The Queſtion was "Whether an APPEAL would lie "to the *Quarter-Seſſions*, from a VAGRANT-PASS: Or "whether an *Order of two Juſtices* was the *only* Method "by which the Vagrant was removeable *from* the "Place to which he had been paſſed." And the Court held "that the Paupers could not be removed away "from the Place to which the Paſs had ſent them, by "any other Method than a *common Order of Removal* "under the Hands and Seals of two Juſtices of the "Peace." The Name of the Caſe, and the Subſtance of it were as follows.—

Rex *v.* Inhabitants of Ringwould.

No. 263.

Saturday 22d June 1776.

TWO Juſtices made a Vagrant-Paſs, in theſe Words, *viz.*

Suſſex—(to wit)— To the Conſtable, Tythingman, or other Officer of the Peace, of the Hundred of *Singlecroſs* in the

An *Appeal* does not lie to the *Quarter Seſſions*, from a VAGRANT PASS; but the only mode of Relief is by an *Order* of *two Juſtices*.

ſaid

ſaid County; and alſo to all Conſtables or other Officers whom it may concern; to receive and convey:
And to the Churchwardens, Chappelwardens, or Overſeers of the Poor of the Pariſh of *Ringjoul* in the County of *Kent*, or either of them; to receive and obey. RINGWOULD *and* WARNHAM.

Whereas *Edward Arnold* and *Mary* his Wife, and *Elizabeth Martha* and *Mary* his Children, were apprehended in the Pariſh of *Warnham* in the ſaid County, as Rogues and Vagabonds, *viz.* wandering without any viſible Means of Livelihood; and upon Examination of the ſaid *Edward Arnold*, taken before us, two of his Majeſty's Juſtices of the Peace in and for the County of *Suſſex*, upon Oath, (which Examination is hereunto annexed,) it doth appear that the legal Settlement of the ſaid *Edward Arnold* and *Mary* his Wife, and *Elizabeth Martha* and *Mary* his Children, is in the ſaid Pariſh of *Ringjoul* in the ſaid County of *Kent*: Theſe are therefore to require you the ſaid Conſtable Tythingman or other Officers of the Peace of the ſaid Hundred of *Singlecroſs*, to convey the ſaid *Edward Arnold* and Family, to the Pariſh of *Eatonbridge* in the County of *Kent*; that being the firſt Pariſh in the next Precinct through which they ought to paſs, in the direct Way to the ſaid Pariſh of *Ringjoul*, to which they are to be ſent; and to deliver them to the Conſtable or other Officer of ſuch firſt Pariſh in ſuch next Precinct, together with this Paſs and the Duplicate of the Examination of the ſaid *Edward Arnold*; taking his Receipt for the ſame. And the ſaid *Edward Arnold* and Family are to be thence conveyed, in like Manner, to the Pariſh of *Ringjoul*, there to be delivered to ſome of the Churchwardens or Overſeers of the Poor of the ſame Pariſh, to be there provided for according to Law. And you the ſaid Churchwardens and Chappel-Wardens and Overſeers of the Poor are hereby required to receive the ſaid Perſons, and provide for them as aforeſaid. Given under our Hands and Seals, the 30th Day of *December* in the Year of our Lord 1775. Cha. Eversfield. O John Shelly O

Suſſex—The Examination of *Edward Arnold*, a Rogue and Vagabond, taken on Oath before us, two of his Majeſty's Juſtices of the Peace in and for the ſaid County, this 30th Day of *December* in the Year of our Lord 1775: Who on his Oath ſaith "that he "was born in the Pariſh of *Ringjoul* in the County of *Kent*, "where

RINGWOULD *and* WARNHAM.

" where his Parents were legally ſettled, as he hath heard and ve-
" rily believes;" and further, " that he hath not done any Act
" to gain a Settlement in any Pariſh or Place, ſince his Birth."

Sworn before us — The Mark of ⋊ *Edward Arnold.*
John Shelley.
Cha. Eversfield.

• I don't find it in the Villare Anglicum: But ſee Harris's Hiſtory of Kent, pa. 250.

The Pariſh of *Ringwould* (for that is its • true Name) appealed to the Quarter-Seſſions of *Suſſex:* Who made the following Order.

Upon the Appeal of the Pariſhioners of the Pariſh of *Ringwould* in the County of *Kent*, to an Order or Vagrant-Paſs bearing Date the 30th Day of *December* 1775, and made by Sir *Charles Eversfield* Baronet and *John Shelley*, Eſq; two of his Majeſty's Juſtices of the Peace in and for the ſaid County, whereby *Edward Arnold* and *Mary* his Wife, and *Elizabeth Martha* and *Mary* his Children, apprehended as Rogues and Vagabonds in the Pariſh of *Warnham* in the County of *Suſſex* aforeſaid, were conveyed from the ſaid Pariſh of *Warnham* to *Ringwold* aforeſaid; and upon hearing Counſel on both Sides; it is ordered by this Court, that the ſaid *Appeal* be *diſmiſſed:* And by the Court it is *diſmiſſed* accordingly; ſubject nevertheleſs to the Opinion of the Court of King's Bench upon the following Caſe, that is to ſay—

Ringwould in *Kent*, Appellants—

To this PASS the Churchwardens and Overſeers of *Ringwould* appealed. But the Court, upon hearing of Counſel, diſmiſſed it; ſubject to the Opinion of the Court of King's Bench upon this Queſtion—" Whether an *Appeal lies*, from a Vagrant-Paſs, to
" the Court of Quarter-Seſſions; or whether the Pariſh of *Ring-*
" *would* ſhould not take the Vagrant back, that the Overſeers
" may purſue the Directions of the 17 *G.* 2. *c.* 5. by carry-
" ing the Vagrant before *two Magiſtrates*, in order to *re-*
" *move.*"

Mr. *Peckham*, on *Tueſday* 11th *June* 1776, moved on Behalf of the Pariſh of *Ringwould*, to quaſh this Order of Seſſions. He ſaid, the Juſtices ought not to have diſmiſſed the Appeal: For, that ſuch an Appeal did *lie*; and there was no Neceſſity for the Pariſh

Pariſh of *Ringwould* to apply for an Order of two Juſtices, if they can ſhew to the Seſſions, upon their preſent Appeal, "that the "Paupers are legally ſettled *elſewhere*, and *not* in their Pariſh." RINGWOULD *and* WARNHAM.

Mr. *Manſfield* now ſhewed Cauſe; and inſiſted, that *no* ſuch Appeal lies; and that the Pariſh of *Ringwould* have no other Method of getting rid of theſe Vagrants thus paſſed to them, but by procuring an *Order of two Juſtices* for their Removal, as is uſual in common Caſes. All this is plain and clear, upon the Act of 17 *G.* 2. *c.* 5: And therefore the Seſſions acted rightly, in diſmiſſing the Appeal.

The 11th Section of this Act is expreſs—"that the Perſon ſo "ſent *ſhall not be removed from the Place* to which ſent, *but* by "Order of two Juſtices, *in the ſame Manner* as other poor Per-"ſons are removed to the Place of their Settlement." This is deciſive. Beſides, a Vagrant can't be ſuppoſed ſettled in the Pariſh where he was apprehended *as* a Vagrant: And *no other* Pariſh could have an Opportunity of defending themſelves, upon this Appeal; or, indeed, of knowing any Thing of the Matter.

The 26th Section gives an Appeal to the Quarter-Seſſions, to "any Perſons *aggrieved* by any Act of any Juſtice or Juſtices "of the Peace out of Seſſions, in or concerning the Execution "of this Act of Parliament." *Who* are meant by Perſons *ag-"grieved?* It muſt mean ſuch Perſons as are, by the ſeveral Clauſes of it, made ſubject to Puniſhment and Penalties: It could not be the Intention of the Act, in giving this Appeal to Perſons aggrieved, to interfere at all about the Vagrant's true and legal Place of Settlement. As ſoon as that could be known, he was to be ſent to it in the *common ordinary* Method, an Order of Removal: And from this there would, of Courſe, be an Appeal to the Seſſions, if diſputed.

Mr. *Peckham*, on the other Side, endeavoured to ſhew that the Appeal did lie; and that it was reaſonable that it ſhould. The Pariſh was certainly *aggrieved*, if a Pauper was ſent to them, who did not belong to them, and whom they muſt maintain till they could find out where his legal Settlement was. It was more reaſonable that that Burden ſhould fall upon the Pariſh where he was found wandering: And upon Appeal to the Seſſions, we may procure collateral Evidence, to ſhew the true Settlement from Witneſſes whom we could not oblige to attend two Juſtices.

He

RINGWOULD *and* WARNHAM.

He referred to the *Practice* in many Counties; and alſo to a Caſe, which had been under the Conſideration of this Court about twenty Years ago, upon the Application of Mr. *Humpherey*, where an Appeal was brought againſt a Paſs; and there was a Mandamus to the Juſtices who had refuſed to hear it, commanding them to proceed upon it: *Newhaven*, he ſaid, was one of the Pariſhes. *

* I find, amongſt my Notes, a Caſe in *Michaelmas* Term 24° *G.* 2. (*Thurſday*, 8th *November* 1750.) *Rex* v. *Juſtices of Peace for Suſſex*; where Sir *Richard Lloyd* and Mr. *Burrel* ſhewed Cauſe againſt a Mandamus to command the Juſtices to proceed upon ſuch an Appeal. The Paſs ſent *Edwarſh Marſh* alias *Butler*, and *Mary* his Wife, to the Pariſh of *Mechin*. *Mechin* appealed. The Juſtices refuſed to proceed. The Queſtion was, "Whether an Appeal will lie from a Paſs, on 17 *G.* 2. "*c.* 5. § 7, 8, 11." The Court thought, an Appeal would lie; and made the Rule for a Mandamus abſolute.

See a good Deal about PASS-WARRANTS *unappealed from*, *ante*, No. 72. and No. 74. Pages 205. to 213. and 214. to 220.

The Queſtion in theſe two Caſes was "Whether, by "13 & 14 *G.* 2. *c.* 24. a Paſs *unappealed from* be as "concluſive as an Order of two Juſtices unappealed "from." Which ſeems to take it for granted "that "ſuch a Paſs *may* be appealed from:" And in the whole Courſe of the Arguments, there was not the leaſt Objection made, or even hinted at, to the contrary. The Opinion of the Court was "that that Act of Par-"liament is *not* to be conſidered as putting a Paſs upon "the foot of an Order of two Juſtices, in this Re-"ſpect." It is worth while to look back to Pages 211, 212. where Lord Chief-Juſtice *Lee* delivers the Opinion of the Court.

Note—At the Argument of the preſent Caſe of *Ringwould*, on 22d *June* 1776, only two Judges were preſent; LORD MANSFIELD being out of Court, and Mr. Juſtice WILLES upon the Road from *Bath*.

Mr.

Mr. Juſtice ASTON and Mr. Juſtice ASHHURST were, both of them, of Opinion, that the preſent Act of Parliament did not mean to give ſuch an Appeal as this is. It ſeemed to them to be inconſiſtent with the eleventh Section of it. If the Seſſions ſhould, upon ſuch Appeal, enter into the Merits, they could not ſend him back to the Place where he was only a Vagrant, nor to any other: He can't be removed from the Place to which the Paſs has ſent him, by any other Method than an original Order of two Juſtices. The proper Subject of an Appeal is an *Adjudication:* A Paſs only recites "that it appears upon "Examination of the Vagrant." It is not ſuch a poſitive Adjudication, as there is in an Order of Removal by two Juſtices. He is paſſed to the Place where he ſays he was ſettled. He can't be ſent from it, but by an Order which adjudges him to be ſettled elſewhere: From which Adjudication an Appeal will properly lie to the Seſſions. There is no Reaſon for an Appeal in ſuch a Caſe, nor any Hardſhip upon the Pariſh to which the Vagrant is paſſed: For, as ſoon as they can find out where his legal Settlement is, (if it really is not with them,) they may remove him to it, by a common Order of Removal. The preſent Appeal is only a *general* Appeal from a Paſs: It does not ſhew any Reaſon, nor make any particular Objection. The Seſſions acted right in rejecting it. RINGWOULD and WARNHAM.

They therefore DISCHARGED the RULE, and AFFIRMED the ORDER of SESSIONS.

As to Mr. *Peckham's* Caſe, they reſerved Leave to him, to mention it again, if he could make it out.

THE COURT being now full, Tueſday 25th June 1776.

Mr. Juſtice ASTON told Mr. *Peckham*, that they had been apprized of a Caſe * which verified his Citation of the Court's having formerly made a Rule abſolute for a Mandamus commanding the Juſtices of *Suſſex* to proceed upon an Appeal from a Paſs: But he did not think that it interfered with their Opinion in the preſent Caſe; which Opinion was grounded upon

* v. ante. pa. 844.

RINGWOULD *and* WARNHAM.

the *Neceſſity of an Order of Removal* made by two Juſtices; concerning which, there was not a Word ſaid in *that* Caſe; and upon which we now rely. Here is *no* Order of Removal: Nothing but a general Appeal, without any Reaſon given. This Paſs has the Examination of the Vagrant annexed to it. If his Settlement is not at *Ringwould*, but elſewhere, they may apply for an Order of two Juſtices, to remove him to it: And that is the only Method by which it can be done.

F I N I S.

A TABLE

A

TABLE

OF THE

PRINCIPAL MATTERS.

N. B. The References in this Table apply to the Numbers in the Margin, at the beginning of each Caſe.

ADJUDICATION *See Juſtices*

MUST be either *expreſs*, or there muſt be a *plain Reference*. No. 12. No. 187. No. 188. See No. 45. and No. 46. There muſt be an Adjudication "That "the Paupers are likely to become charge-"able *to the Pariſh* from whence they are "removed."

"That it was the laſt legal Settlement of the "*Wife and Daughter*" (without ſaying it was the *Huſband's*) *ſufficient*; becauſe the Wife could not be ſettled at any other Place than where her Huſband was ſettled. No. 57.

Muſt *expreſsly ſtate* "that it is *fraudulent*;" Or elſe, *B. R.* can not take it to be ſo. No. 59. *See* Fraud.

Whether a poſitive Adjudication can *cure an imperfect Complaint*. No. 245.

ADMINISTRATION

Neceſſary to be taken out, by a Perſon having the Remainder of a Term in a Cottage, *within* that Term: Otherwiſe, no Settlement is gained. No. 34.

Not Neceſſary, where there is a *derivative* Settlement. No. 140.

AGREEMENT

To put a Boy Apprentice, and all the Terms complied with purſuant to ſuch Agreement; But *no Indenture executed*—The Boy has no Settlement by *that* Apprenticeſhip. No. 94. No. 173. *See* Indentures.

AMENDMENT. *See Order, Seſſions.*

Difference between *Form* and *Merits*——The Seſſions amending Matters of *Subſtance*—bad. They can not amend any Thing that *requires Examination*. No. 58.

APPEAL

Muſt be *continued by Adjournment*; notwithſtanding a conditional Reference to the next Judge of Aſſize: Or elſe, the Seſſions can *not* take it up again. No. 35. *See* Seſſions.

Muſt (by 8 & 9 *W.* 3. *c.* 30. *ſect.* 6.) be to the Quarter-Seſſions of the *County*, *not* to the Quarter-Seſſions of a *Burrough*. No. 35.

An Order of Removal not appealed from, is in general *concluſive* upon the non-appealing Pariſh, as againſt *all* others: but not ſo, where the Appeal (of which Notice had been ſerved) is *dropt* by the adverſe Pariſh's

abandoning and giving up the Order appealed from. No. 204.

The not-appealing precludes from diſputing the Settlement of the Paupers, not only with any *other Pariſh*, but even with another TOWNSHIP in the *ſame Pariſh*. No. 207.

To the Quarter-Seſſions, from a *Paſs-Warrant*, by the *Pariſh* to which the Vagrant is ſent—Whether it *lies*, or not. No. 263. See *Paſs*.

APPRENTICE

Gains *no Settlement* by *Parol*-Binding: It muſt be by *Indenture*. No. 102. Nor unleſs a *Binding within the Act* of 3 & 4 *W. & M. c.* 11. *ſect.* 8. appears. No. 104, 227, 262. But the Court will not *preſume* "that it was *without* Indenture;" eſpecially after the Maſter's Death. No. 227 & 262.

May, AFTER *the Death of his Maſter*, gain a Settlement by *Hiring and Service for a Year*. No. 114. *See* Settlement *gained* by Hiring and Service.

Gains a Settlement by his Apprenticeſhip in a Place to which the Father came by *Certificate, after a Removal:* For then the *Certificate had been ſatisfied*; It was *functus Officio*. No. 119. *See* Certificate-Man.

To a *Certificate*-Man, in a *third* Pariſh, gains a Settlement. In a *Certificate, no other* Pariſhes are concerned, but the *Two, from* which and *to* which it is given. A Certificate taken from *A.* to *B.* ought to be *left* with *B.* and *not* taken from thence to *C.* No. 122. No. 125. *See* Certificate.

Being told by his Maſter "to *go about his* "*Buſineſs*," *without cancelling the Indentures*; and going away, and hiring himſelf to ſeveral Maſters: his Settlement is in the Place where he ſerved his *original* Maſter the laſt forty Days. *Otherwiſe*, if the Maſter had *aſſigned* him over. No. 174. *See* Indentures.

Was bound out by the Pariſh, *till* twenty-four: *after* he was twenty-one, the Maſter and he agreed to *cancel* the Indentures. He then hired himſelf and ſerved for a Year, and gained a Settlement thereby. No. 180. *Otherwiſe*, if he had been *under* the Age of twenty-one. No. 142.

Gains a Settlement where he LODGES *by Night*; though he works in the Day-time and diets with his Maſter in another Pariſh. No. 183.

Gains a Settlement though the *Indentures* be *not ſtamped* agreeable to 8 & 9 *Ann. c.* 9. *ſect.* 32, 36, 39, *if* put out by a *Pariſh*, or the Money given with him ariſes out of a *public* Charity. No. 185. No. 219. *See* Indentures.

Can't be eſteemed to ſerve *under* the Indentures, after they have been *given up*. No. 193.

Nor can an Apprentice aſſigned over to a Certificate-man gain a Settlement in the Pariſh to which that Man came certificated. No. 198. (*See* Certificate-man.)

Nor can an *unſtampt Agreement* ſupply the place of an Indenture, where there is *no Indenture* executed. No. 203.

Gains a Settlement by *Inhabitancy or Reſidence* (for forty Days;) not by *actual Performance of Service*, (which is not material.) No. 221.

A poor Pariſh-Child may be bound to an Inhabitant of *another* Pariſh. No. 226.

Is ſettled where the Apprentice ſerved the laſt 40 Days, *under the Indenture*. *Ibidem.*

May be *diſcharged*, and the Apprenticeſhip *determined*, by Conſent of *all* the Parties *concerned in the original Contract:* which in the Caſe of *Pariſh*-Poor Children, includes the *Pariſh Officers*; in other Caſes, only the Father, Maſter, and Apprentice (though an Infant.) No. 239.

What ſhall be eſteemed "a Thing *given to* "*the Maſter* for his Benefit," within 8 *Ann. c.* 9. § 45. ſo as to make the Indenture void, for want of *Duty* and *Stamp*. No. 261.

TABLE of the PRINCIPAL MATTERS.

BASTARD

Is ſettled where born. No. 9. though it be the Child of a *Certificated* Woman. No. 66, No. 90.

CERTIFICATE

Is *valid*, though the Words "legally ſettled" be not in it; provided there be Words *tantamount*. No. 77.

Invalid, if not allowed by two Juſtices, purſuant to 8 & 9 *W.* 3. *c.* 30. No. 187.

Does *not* bind the Pariſh giving it, unleſs it be *in the Terms* required by the Statute; though *ſaid to be* ſigned, atteſted and allowed *according to the Statute*; and eſpecially where it is given for the *Purpoſe of admitting a Patient into an Hoſpital*. No. 99.

Not neceſſary to be directed or delivered to a Pariſh-Officer. No. 62.

Having been a long Time *deſerted* or *waved*, does *not* prevent the *Grandſon* of a certificated Perſon from gaining a *Settlement by Apprenticeſhip*. No. 129.

No other Pariſh is concerned in a Certificate but the *two*, *from* which and *to* which it is given—If directed to *A.* it ought to be *left* there, and not taken from thence to *B.* No. 122.

Specifying a Female to be *unmarried and with Child*, ſhall bind the Pariſh giving it. No. 201.

Proof of the *Atteſtation of the Witneſſes*, required by 3 *G.* 2. *c.* 29. § 8. What is *ſufficient* Proof of their Hand-Writing. No. 225.

Acknowledging "a Man, and his Wife, "*and Edward their Son* to be their Pariſhi-"oners," ſhall bind them to receive *Edward* their Son; though he was, in Fact, a *Baſtard*: which Fact the Father concealed from them, and applied to them for a Certificate for him *as his Son*. No. 228.

Will not bind the Pariſh that gives it; unleſs it be under the Hands and Seals of a *Major*-Part of the *Pariſh-Officers*, purſuant to 8 & 9 *W.* 3. *c.* 30. No. 240.

CERTIFICATE-MAN

Married a ſecond Wife, his *firſt living*: The Pariſh who gave the Certificate, *acknowledging* the *ſecond* Wife, are not only obliged to maintain the ſecond Wife, but *alſo* the *firſt* and her Children. No. 86.

Or any of his Family, cannot *gain* a Settlement in the Pariſh to which he is certificated; *but* by *one of the Methods* preſcribed by the Statute of 9 & 10 *W.* 3. *c.* 11: *viz.* "*Hiring a Tenement of* 10*l.* yearly "Value; or, *executing ſome annual Office in* "the Pariſh." No. 112. *See* the Caſes there cited.

His *Children* are *included* in the Certificate. No. 121; And can not gain a Settlement by Hiring and Service. No. 134.

His *Grand*-Children are *not* prevented gaining a *Settlement by Apprenticeſhip*, where the Certificate has been a long Time *deſerted* or *waved*. No. 129.

May gain a Settlement in a *third* Pariſh by the ſame Means as any other Perſon might: No. 122. Before the Father's Reſidence in that third Pariſh, the Son married, and *never lived* there: The Son had *no Settlement* there. No. 93.

Is *not removable*, unleſs *actually* chargeable: Being LIKELY *to become ſo* will not do. No. 100. No. 126.

Reſiding upon his *Own* can *not* be removed from it. No. 249.

Shall not be the *Inſtrument of burthening* the *ſame Pariſh* to which he comes by Certificate; though he may be the Inſtrument of an Apprentice's gaining a Settlement in a *third* Pariſh. No. 198.

One *only* of the Family aſks Relief, and has it: None of the reſt do ſo. *Qu.* Whether the Juſtices can ſend back the *whole* certificated Family;

Family; or only that Individual who asked Relief. No. 233.

Being *Deviſee*, of "*free Liberty and Power* "DURING NATURAL LIFE TO DWELL "in a Cottage in the Pariſh to which certi- "ficated," can't be removed from it, to the Pariſh which gave the Certificate. No. 244.

Renting ten Pounds a Year—The *Value* of the Tenement is material; *not the Rent paid.* No. 260.

CHILDREN

Where it is neceſſary, and where not, to ſet out their *Ages*. No. 26. No. 45. Their Age *muſt* be ſet forth, when they are ſent in *Conſequence* of their Father's Settlement; or it muſt be expreſsly adjudged "that "they have gained no other." No. 63. Their Age muſt be ſet forth, or *Settlement adjudged*. No. 70. No. 72.

By a *former* Huſband, do not acquire the Settlement of the *ſecond*. No. 2.

Of a Father having *no* Settlement, muſt have the Settlement of the *Mother*. No. 118. No. 153.

Can *not* be *removed* from a Pariſh where they have an Eſtate of their *Own*. No. 49.

Removed with the Mother to her *Huſband's* Settlement, and ſaid to be *her* Children (inſtead of *his* or *their*—) Orders quaſhed as to the Children. No. 73. *See* Order.

Under Age, can not *conſent* to be *diſcharged from their Apprenticeſhip*. No. 142. No. 143.

Taken into a Family *from Charity*, and continuing there ſix Years *without* any *Contract* or Agreement, gain *no* Settlement. No. 157.

Are ſettled where the *Father* is, *after* 30 Years Cohabitation with the Mother; though their Marriage was doubted. No. 163.

Have no Settlement in a Place where the Father purchaſed an Eſtate for leſs than 30*l.* though the Father himſelf be *irremovable ſo long as he inhabits* the purchaſed Premiſſes No. 166.

Of a *Certificate*-Man are *included* in the Certificate. No. 121; and have no other Method of gaining a Settlement in the Pariſh certificated, but by One of the Two ſpecified in the Act of 9 & 10 *W.* 3. *c.* 11. No. 65. But they may gain a Settlement in a *third* Pariſh by Apprenticeſhip. No. 92. Or by Hiring and Service. No. 123. But if the Father had gained a Settlement in a *third* Pariſh, and *before* that, the Son was married and never lived there; the Son has *no* Settlement in that *third* Pariſh. No. 93.

Of a Certificate-Man, who had gained a Settlement by a Purchaſe of 42*l.* Value, having no Settlement but what they *derive* from their Father, are *alſo* ſettled there. No. 75.

DERIVATIVE

Before Emancipation from his Father's Family; *not after*. No. 251.

EMANCIPATION

See *Derivative* No. 251.

EVIDENCE

Of *Hiring* for a Year, by *Implication*. No. 220.

Hear-ſay Evidence—where admiſſible. *Ibidem.*

Of Birth—

Copy of the Pariſh Regiſter, and hearing the Pauper call the Woman his Mother, was holden ſufficient; though the Mother herſelf (who was alive and ſubpœnaed) did not attend, to prove it. No. 238.

An *Apprentice's Maſter* not obliged to anſwer an improper Queſtion concerning the *Conſideration* given. No. 261. See *Stamp-Duty*.

EXCEPTIONS

(A Bill of) No. 19.

Will not lie upon a *ſummary* Proceeding before Juſtices. No. 24.

TABLE of the PRINCIPAL MATTERS.

FRAUD

Muſt be ſtated. No. 59, 240. *See* Adjudication.

INDENTURES *See Apprentice*

Voidable only, *not void.* No. 28. Or where the *Conſideration*-Money (which was only 6 *d.*) is *not inſerted.* No. 120.

Abſolutely void, if not ſtampt; and can not be given in Evidence. No. 69. No. 80. *Unleſs* it be an Apprentice put out by a *publick Charity.* No. 185.

Of Apprenticeſhip not neceſſary to be produced to the Seſſions, if they ſtate "that "*it appeared to them* that the Perſon was "bound." No. 51.

Exchanged—amounts to a *Cancelling*, an *Annihilation*, an *entire Diſcharge* of them to all Intents and Purpoſes. No. 95. No. 164.

Not cancelled—The Settlement is with the Original Maſter; though the Apprentice had been hired to ſeveral Maſters after he left the Maſter he was bound to, *before* the Expiration of the Term. No. 174.

JUDGE of *Aſſize*

Having *heard Counſel on both Sides*, and thereupon *given his Opinion*, upon a Caſe *referred to his* Determination by the Seſſions; the Court will not afterwards enter into a *freſh Diſcuſſion* of it. No. 247.

JUSTICES *See Seſſions, Order*

Can not ſet aſide Pariſh Indentures *ex officio*; but on *Complaint.* No. 5.

One of the Two, who aſſent to bind a Pariſh Apprentice, muſt be of the *Quorum*; which muſt be *alledged* in the Order. No. 41.

Muſt ſhew they have *Juriſdiction:* Orders quaſhed for want of it. No. 8.

Saying that the Paupers were likely to become chargeable *generally*, without ſpecifying *to whom*, by an expreſs Adjudication or a plain Reference—*bad.* No. 12.

Muſt examine into the Matter upon which an Order of Removal is grounded, *Themſelves, together*, and not ſeparately. No. 44.

One of them making an original Order of Removal, being an *Inhabitant* in the Pariſh from whence removed.—Order bad. No. 68.

But ſee the Act of 16 *G.* 2. *c.* 18. *ſect.* 1. "Juſtices *may now* act in their own Pariſhes, in ſome Caſes."

Can not remove a Man *from his Service.* No. 180.

Can not diſcharge a Servant, but by an *Order*; which muſt be in *Writing.* No. 115. Nor can they diſcharge a Servant for *marrying*, againſt the Servant's Conſent. *Ibid.*

Can not remove a Man *from* his *Own* (though he might himſelf have acquired a *ſubſequent* Settlement:) conſequently, they could not remove his Wife and Children ſo long as it *remained his.* No. 169.

MARRIAGE

The *Validity* of it not to be *controverted* after a Man and Woman have been received as Man and Wife, upon a Removal, without appealing. No. 67. No. 86. nor after thirty Years Cohabitation. No. 163.

Is abſolutely *void* by the Act of 26 *G.* 2. *c.* 33. *ſect.* 11. if a *Minor* marries *without* Conſent. No. 154.

It is not incumbent on the Perſons married to *prove* "that the *Bans were publiſhed:*" But an *Entry* ought to be made purſuant to the directions of the Act of 26 *G.* 2. *c.* 33. *ſect.* 14 & 15; or the Miniſter neglecting it is ſubject to an Information. No. 162.

ORDER

Confirmed at Seſſions, binds the Pariſh charged againſt all the World. No. 6. No. 127.

——— by Seſſions, without Appeal, is concluſive upon the Pariſh *to which* removed. No. 67.

Diſcharged—binds the contending Pariſhes. No. 6. No. 127. This Rule holds *only* where the *Circumſtances* remain the *ſame*. No. 89. But does not bind a *third* Pariſh. No. 135.

Quaſhed, for Want of Juſtices *ſhewing* they have *Juriſdiction*. No. 8.

——— for having *amended* Matters of *Subſtance*. No. 58. *See* Amendment.

Quaſhed for want of an *Adjudication*. No. 23. No. 188: There muſt be either an expreſs Adjudication or plain Reference. No. 12.

(*Original*) muſt *ſhew* one of the two Juſtices to be of the *Quorum*. No. 50.

Removing Wife and Children *without* the Huſband—good; becauſe the Intruders complained of were the Wife and Children, *not* the Huſband. No. 53.

Not appealed from in due Time, is *final* upon the Pariſh *to which* removed. No. 60. No. 96. That Pariſh is *concluded* againſt all the World. No. 176.

Bad—where *One of the Juſtices* removing was an *Inhabitant* in the Pariſh *from whence* removed. No. 68. *See* Juſtices.

——— where Children removed with the Mother to *her Huſband's* Settlement, and ſaid to be "*her*" and not *his* Children. No. 73.

——— where the Seſſions do not determine whether a *Marriage* be by a Clergyman or not. No. 79.

Of Seſſions affirmed, when the *Facts* are *not* ſufficiently *ſtated*. No. 97.

Of a Juſtice, *diſcharging a Servant*, muſt be *in Writing*; becauſe it is an Act of Juriſdiction. No. 115.

Of Removal *unappealed* from, is final; but not a *deſerted* Order (*See* Appeal) No. 204.

Of Removal—*County* in the *Margin* only, but not in the Body, is ſufficient, if there be a clear and plain *Reference* to it. No. 204.

Of Removal—Delivery of it and of the Paupers to a Churchwarden, where there was *no Overſeer* for that part of the Pariſh, was holden ſufficient; the Churchwardens having uſually acted in the Maintenance of the Poor through the *whole* Pariſh. No. 205.

Of Removal,—adjudging "that the Paupers "*have* become chargeable," imports that they were ſo *at the Time* of making the Order. No. 213.

Of Seſſions (upon Appeal from an Order of Removal) muſt ſtate *Facts*, and not mere *Evidence*. No. 214. No. 219. and if ſent back to be re-ſtated, it depends upon the Nature of the Caſe, "whether the Seſſions "ſhould hear *freſh Evidence* or not." *Ibidem*.

The *Recognizance* ſhall be *diſcharged*, where ſuch Order is varied. *Ibidem*.

PARISH

Townſhips are bound to appeal, as well as Pariſhes. (See Appeal.) No. 207.

PARISH-OFFICERS.

Churchwarden conſidered as an Overſeer. (See Order.) No. 205.

PASS-WARRANT

Unappealed from—has not the ſame Effect as an *Order* of Removal unappealed from: In the *latter* Caſe the Pariſh not appealing is *concluded*. No. 72. No. 74.

Whether an *Appeal* lies to the Seſſions, from a Paſs-Warrant, by the *Pariſh* to which the Vagrant is ſent: Or whether the *only* Method of removing the Vagrant from the Place

Place to which ſent, is not an *Order of two Juſtices*. No. 263.

RATE—

What ſhall, or ſhall not, be eſteemed a *Rating by the Pariſh*. No. 245.

What ſhall be *ſufficient Proof* of being *rated*. No. 259.

REGULA GENERALIS—

A *ſtanding Rule* was made on the laſt Day of *Hilary* Term 1775, "that ALL SESSIONS-"CASES ſhould be ſet down *in the* CROWN-"PAPER; and a *Copy of the Order* left with "the junior Judge, two Days before Ar-"gument." No. 250.

RENTING.

A Tenement of 10 *l. a Year Value*, by a Certificate-Perſon—The *real Value* is the Thing material: Not the *Rent* actually reſerved and paid, nor the Rent for which it is let to a *future Tenant*. No. 260.

SESSIONS

Are not obliged to ſtate a Caſe *ſpecially*. No. 19. They muſt ſtate the *Fact itſelf*; not *Evidence* of the Fact. No. 38. And where their Expreſſion is not abſolutely clear and explicit, they ſhall be *intended* to have done right. No. 144.

When *adjourned*;—It muſt appear *when* the *Original* Seſſions were holden. No. 26, No. 32.

Can *amend* Defects in *Form only*; but can not amend Merits or what requires *Examination*. No. 58.

Have nothing to do with an Original Order, but upon *Appeal*. No. 96. And can not take up an Appeal if not continued by *Adjournment*; notwithſtanding a conditional Reference to the next Judge of Aſſize. No. 35.—If once *dropt* and not adjourned, it can not be *reſumed*. No. 105.

Are to determine whether a *Marriage* be by a *Clergyman*, or not. No. 79. *See* Order.

The Quarter-Seſſions of a *Burrough* have no Juriſdiction in an *Appeal* from an Order of Removal: The *Appeal* muſt be to the Quarter-Seſſions of the County. No. 191.

SETTLEMENT

Of a *married Woman*—her Maiden-Settlement *ſuſpended* during Coverture. No. 39.

N. B. This is *denied* at No. 118. Her Maiden-Settlement CONTINUES, when the *Huſband has no* Settlement.

Of an *Infant* goes *no higher* than the laſt legal Settlement of the *Parent*, *not* to the *Grand*-Mother. No. 49.

Of Children eleven or fourteen Years of Age, muſt be *adjudged*. No. 187.

To be *favoured*. No. 220.

SETTLEMENTS *gained by*

Adminiſtrator—and Mortgagee for 15*l.* and Creditor by Bond and ſimple Contract for 18*l.* more, and 40 Days Reſidence. No. 61. He was *not* within 9 *G.* 1. *c.* 7. *ſect.* 5. *or*

Executor—who was entitled only to one fifth of 22*l.* a Year; but proved the Will *alone*, and reſided 12 or 13 Weeks. No. 172. The *Value* is immaterial: It devolved upon him *by Act of Law*.

Apprenticeſhip—By a *Pariſh*-Apprentice *hired out* by the firſt Maſter, by the *laſt* 40 *Days Reſidence*, without the Aſſent of Juſtices. No. 5. No. 43.—By being *aſſigned* by *Indorſement* on the Indenture. No. 84.—By being *aſſigned* from the firſt, to a ſecond; and from the *ſecond*, to a *third* Maſter, *without* the *Aſſent* of the firſt Maſter: Settlement gained by 40 Days Reſidence with that *third Maſter*. No. 91. The Conſent of the ſecond Maſter *includes* that of the firſt. No. 186.

For *four* Years only; notwithſtanding 5 *Eliz. c.* 4. *ſect.* 4. No. 28.—to a Mariner for *four* Years only; and the Indenture *not inrolled* purſuant to 5 *Eliz. c.* 5. or 2 & 3 *Ann. c.* 6. No. 189.

Apprenticeſhip—Though 30 *l.* were given the Maſter to *clothe* the Apprentice and *not inſerted* in the Indentures; 'tis not within 8 *Ann. c.* 9. *ſect.* 35 & 39. No. 48.—Where the Conſideration-Money (which was only 6 *d.* was *not inſerted*; the Indenture was *not void.* No. 120. Though 5 *l.* were given with the Apprentice, and the Indentures were *not ſtampt* purſuant to 8 *Ann. c.* 9. *ſect.* 32. *ſect.* 36. *ſect.* 39; yet it is *exempted*; becauſe the Money was paid out of a *voluntary charitable Subſcription* for that Purpoſe. No. 185.

To a *Certificated* Maſter in one Pariſh, who afterwards *aſſigned* the Apprentice to One legally ſettled in another; and he ſerved out his Time with the *Aſſignee:* The Apprentice gained the Aſſignee's Settlement. No. 54.—Or, to a Certificate-Maſter who *removes* into *another* Pariſh; if the Apprentice ſerves him there 40 Days. No. 125, No. 170.—For the *laſt* Part of a Term, in a Pariſh, with one who, *after* the Expiration of the Term and *not before*, brought a Certificate thither; becauſe the Maſter was *no certificated* Man *during* any Time of the Apprenticeſhip. No. 56.——To a Maſter who *ſaid* he came into the Place by *Certificate*; but no Certificate was *found.* No. 106.——In a Place to which the Father came by Certificate, *after a Removal:* For then the Certificate was *functus Officio.* No. 119.——The *Son of a Certificate-Man may* gain a Settlement by Apprenticeſhip in a *third* Pariſh. No. 92. No. 122. *See* Certificate.

With the *firſt* Maſter, where he was bound for ſeven Years and ſerved five; and then the Indentures were *exchanged:* Afterwards, it was *agreed* to bind him for four Years; and he lived with that Maſter a Year and three Quarters; but *no Indenture* was *executed*, No. 95. *See* Indentures.

Apprenticeſhip—with a *ſecond* Maſter; the firſt having given his *Conſent* to the Apprentices ſerving the ſecond the Remainder of the Term. No. 133.

After 40 Days Habitation; notwithſtanding his then going away ſick, with the *Conſent* of the Maſter, and the *Indentures being mutually given up.* No. 164.——To a *Maſter of a Ship*, by lying in a Pariſh 40 Days *on board a Ship.* No. 171.

N. B. This Ship lay in a *Baſon or Harbour* which was Part of and cut out *within the Pariſh* of *B. B.* and it was ſtated to be "the proper Home of "the Ship." There is no Difference between lying in a Houſe and lying in a Ship *in* a Pariſh. *Ibid.*

Although the Apprentice was told by the Maſter, two Years before the Expiration of the Term, "to go about his "Buſineſs;" and accordingly he went away and hired himſelf to ſeveral Maſters; *but* the Indentures were *not cancelled:* They therefore *remained in Force*, and his Settlement is in the Place where he ſerved the *original* Maſter the laſt 40 Days. *Otherwiſe*, if the Maſter had *aſſigned* him over. No. 174. And

The Settlement of an Apprentice is in the Place where he *lodges* by night; though he works and diets with his Maſter in another Pariſh. No. 183.

Under an Indenture *not Stampt for the Apprentice-Duty*, nor ſuch Duty paid: For, the Money being left "to be given as the "Teſtatrix's Brother ſhould think fit; ſome on't to put children out Appren-"tices," is a *publick* Charity, and within 8 *Ann. c.* 9. *ſ.* 40. No. 219.

By *reſidence for forty Days*; though a *Cripple*, and incapable of performing *actual Servic*. No. 221.

Pariſh-Poor may be bound to Inhabitants of *other* Pariſhes. No. 226.

Apprentice-

Apprenticeſhip—and Service *under* the Indenture. The Maſter's Widow diſcharges the Apprentice: But had no Adminiſtration; nor were the Indentures delivered up. No. 242.

Service *under* the Indenture, without the *particular explicit* Conſent of the Maſter. No. 250.

Birth—A *Baſtard* is ſettled *where born*, though called in the Order "*the Son* of *J. H.*" the Father. No. 9. *See* Baſtard.

Certificate-Man—by executing an *annual* Office; though it be not a *Parochial* Office. No. 10. But

Serving an annual Office, *if not legally placed* in it, gains *no* Settlement. No. 76. —— And if legally placed in an annual Office, if he don't *execute* it a *whole* Year, he gains *no* Settlement. No. 81. Or a Schoolmaſter who receives 10 *l.* a Year for inſtructing Youth, having no Freehold there, gains *no* Settlement No. 83.

By renting a *Windmill* of 10 *l.* *per Annum*. No. 33.

By making a *Purchaſe* of 47 *l.* Value. No. 72.——of 42 *l.* Value. No. 75.

His *Apprentice* being *aſſigned over* to a Maſter legally ſettled in *another* Pariſh—the Apprentice gains a Settlement by ſerving out his Time with the Aſſignee. No. 54.

His *Children* can *not* gain a Settlement, but by one of the two Methods ſpecified in 9 & 10 *W.* 3. *c.* 11. No. 65. They can *not* gain a Settlement by a *Hiring and Service in the Pariſh* to which the Father was certificated. No. 88. No. 92. No. 112. No. 121. *Unleſs* under particular Circumſtances: For Inſtance—If a Child had ſerved an Apprenticeſhip in a *third* Pariſh; and *after that*, returned to the Pariſh the Father came into by Certificate; he may then gain a Settlement by *Hiring and Service for a Year*. No. 136. No. 137.

Certificate-Man—*may* gain a Settlement by *Apprenticeſhip* in a *third* Pariſh. No. 92. Or by Hiring and Service in a *third* Pariſh. No. 123. Or, *even in* the Pariſh to which the Father came by Certificate, *after a Removal*: For then the Certificate was *functus Officio*; and it can have its Effect but *once*. No. 119.

Deviſe—*to a Certificate Perſon*, of a *Liberty of Reſidence* in a Cottage during Life. No. 244.

Eſtate—reſiding upon One's *Own*, be it *ever ſo little*. No. 4. *See* No. 166. (a *ſingle Exception* to the *Univerſality* of this Poſition.) Of the Value of 30 *l.* *bona fide* paid with 40 Days Reſidence; though the Premiſſes ſhould be immediately *mortgaged*. No. 18. ——Or though the 40 Days Reſidence be not *ſucceſſive*, nor *upon* the Eſtate; but only lodging in the Pariſh. No. 40. No. 42. ——Or though the Purchaſer borrowed 24 *l.* to pay 38 *l.* for the Eſtate, and immediately let it without ever reſiding upon it; but *lived in* the Pariſh ſeven Years; and then ſold it to pay Mortgage. No. 116.

Of *leſs* than 30 *l.* Value; when the Owner comes to it by *Gift* or *Deviſe*, &c.: 'Tis not then within 9 *G.* 1. *c.* 7. No. 124. No. 179.—Although the Purchaſe-Money was *only* 12 *l.*—by *being rated and paying* to the Land-Tax. No. 138. A Woman purchaſed a Leaſehold Tenement for 6 *l.* and afterwards *married*; upon her *Marriage*, it veſted in her *Huſband*; and by 40 Days Reſidence, he gained a Settlement: The Huſband died firſt. His Settlement *communicated* itſelf to the Wife. No. 182.

Where the *Wife* reſides 40 Days upon the *Huſband's Own*, WITHOUT her Huſband, ſhe is not removeable when *likely* to become chargeable. No. 131.

Executing—an annual Office *in* a Parish; though the Extent of the Office's Jurisdiction does not exceed one sixth Part of the Parish. No. 117.

Habitation—*Forty Days* Inhabitancy or Residence *absolutely necessary*. No. 16.

Hiring—*General* If it be a Hiring *at all*, it is a Hiring for a *Year*. No. 107, No. 160, 236, 257.

Conditional—with a Year's Service. No. 1, No. 7, No. 71. No. 101.

——— of a *married* Man, and Service for a Year: But the Agreement was *not completed* till *after* his Wife's Death. No. 145.

And SERVICE; though absent *without* the Master's Leave, for three Weeks in the *Middle* of the Year: But the Master *received him again*. No. 14.

For a Year, *and Service till* within three Weeks of the End of the Year; then going away for about six Weeks, *with Leave*, and returning to his Master's Service. No. 85.

——— *till* within five Weeks of the End of the Year; and then absent *with leave*. No. 152.

——— *till* within seventeen Days of the End of the Year; and then leaving it, being visited with ILLNESS, and never returning. The Relation between Master and Servant continued: It is not put an End to by this *Visitation of God*. No. 158.

——— *till* within ten Days of the End of the Year; and then desiring Leave to go and visit his Relations; *because* "he "wished *not* to be settled there." The Leave was fraudulent, and a mere Evasion of the Settlement. No. 181.

For *three Quarters of a Year*, and *serving* it; then leaving the Service for *One Hour*; returning and Hiring for a *whole* Year; but *serving* only *Half* a Year. This was *no Discontinuance* No. 37.——For *less* than a Year; then a *second Hiring* to the *same* Master for a *Year*, but *not serving* out the *whole* Year; but being COUPLED *to the former* Hiring, the *total Service* amounted to *above* a Year. No. 175.

Hiring—for a *Year*, *and Service for a Year*; though paid only in Proportion the Work done, (*viz.* so much *per* Stone for spinning Yarn) but *lodged and boarded with the Master*. No. 52.

——— though the Master or Servant were *at Liberty to determine* the Contract *at the End of any Quarter*; but did *not do* it. No. 71.

——— though the Wages were received as wanted; and *Absence* at *divers* Times, *with* Leave. No. 78.

And Service for a Year, and 40 Days Residence at *different* Times, but *not together*. No. 82. No. 189.——The Settlement is gained where the last 40 Days Service is performed. No. 87.

——— by an *Apprentice*, *after the Death* of his Master. No. 114.

——— though the Term for which he was bound Apprentice was *not expired*: But the Indentures were *cancelled*. No. 180. *See* Indentures.

And Service for three Quarters of a Year; when the Master complained of the Servant's *marrying* within the Year, and the Justice allowed a *Discharge* AGAINST the Servant's Consent. No. 115. *See* Justices.

——— *for* eleven Months, and *to give in* a Month's Service: It is a Hiring and Service for a Year. No. 139.

For three Years, under certain *Conditions*: and *Service* for one Year and a Quarter; though, at the End of six Months, the Servant was *absent* for the Space of three Months, being *ill*; but, when he returned, the Master *received* him. No. 108.

Hiring—

Hiring—ſerve for a Year, from *Whitſuntide* to *Whitſuntide* following; though ſhort of 365 Days; it being ſtated as the Uſage of that County *(Durham.)* No. 208.

For a Year, to work at Stamps (Tin-mills;) though he actually worked with an Exception of *Holydays* and *Sundays*, according to the Cuſtom of Tinners.

N. B. The Diſtinction turns upon the Exception being *Part of the Contract*, or not. No. 209. See No. 218.

An *implied* Hiring for a Year, and Service. No. 220.

To ſerve from the Day *after Michaelmas-Day till Michaelmas-Day* following—The *Cuſtom and Uſage* of the Country being ſo. No. 222.

Leaſeholder—for *Term of Years*; the Value of it being above 30 *l.* No. 17.

Marriage—and 40 Days Reſidence, upon the *Huſband's Own*, WITHOUT her Huſband. No. 131.

And 30 Years Cohabitation—After ſo long a Time, the *Validity* of their Marriage is not to be diſputed. No. 163. *See* Children.

A Certificate-Man married a *ſecond* Wife *during* the *Life* of his *firſt*: The Pariſh who gave this *Certificate* acknowledging the ſecond Wife, are not only obliged to maintain the *firſt*, but alſo the *ſecond* Wife, and *their* Children by him. No. 86.

Parentage—

[All derivative Settlements may be referred to this Head.]

A *Child* 13 Years old removing with the Mother as Part of her Family, after the Father's Death, and reſiding upon *Lands of the Mother's*, of 4 *l. per Annum*, gains a Settlement *under the Mother*, equally as it would under the Father. No. 15.

Parentage—*Children* of a *Father having* no Settlement, muſt have the Settlement of the *Mother*. No. 153.

Renting—A *Windmill* of 10 *l. per Annum*. No. 33.

A *Tenement* of 10 *l. per Annum*.—The *Ability* to *ſtock* the Farm is not material. No. 59.

——— of 12 *l.* a Year, for *Half* a Year only. No. 167.

——— of 10 *l.* a Year; and reſiding above forty Days in a *Part* of it worth 40 *s.* a Year only; and *letting the Reſt* to Under-Tenants. No. 184. He needs *not occupy the Whole*. No. 235.

Different Tenements in *different Pariſhes*, amounting to 10 *l.* a Year; the Settlement is in the Pariſh where the Man *reſides* above 40 Days. No. 13. No. 190.

The MOIETY *of a Tenement* as *Tenant at Will*, where the Moiety *exceeds* 10 *l.* a Year. No. 128.

Land *from Candlemas to Michaelmas*, and paying 11 *l.* for it, with 40 Days Reſidence. It needs not be a Taking for a *whole* Year. No. 151. *V.* No. 169. & No. 190.

——— from 29*th of May to Lady-Day*, at 26 Guineas Rent. No. 178.

A Houſe *for five Months*, at 4 *l.* Rent; though it is not equivalent to 10 *l.* a Year; but the Seſſions expreſsly ſtated it to be *worth* 10 *l.* a Year. No. 185.

A Jobb-Coachman uſed the Gentleman's own Stables. It was looked upon to be a *Separate Contract* (as it was penned) for the Stables. No. 212.

Hiring *Part of a Houſe* entirely to Himſelf, paying ten Pounds a Year clear, gains a Settlement; Though it has only *one Door* and *one Staircaſe*, uſed *in common* with others reſiding in it. No. 217.

Renting

Renting—a Tenement at 10*l.* a Year Rent; but the *Landlord to pay all Pariſh-Rates and Charges*. No. 233.

The *Credit* to *take* and be *truſted* with that Value, is the *Criterion*. No. 233. No. 235. No. 248.

A *Shop*, being *Part of a Houſe*. No. 248.

A mere Right—to *Dower* No. 243.

Service—for the laſt 40 Days with the *Executor* of the original Maſter. No. 64. *See* Settlement gained by Hiring and Service.

Except Holydays and *Sundays*, according to the Cuſtom; *if* ſuch Exception be *not* Part of the Original Contract: Otherwiſe, if the Exception be Part of the Original Contract. (*See* Settlements gained by Hiring.) No. 209.

Wanting three Weeks at the *End* of his Year, without his Maſter's Knowledge or Leave, or ever returning: but it was to *get his Leg cured*, which had been *kicked by his Maſter's Horſe*. No. 211.

Wanting One Day at the *Beginning*, and *One Day* at the *End*. No. 214.

Wanting a Day at the *End*, was conſidered as an Abſence by *Leave*, and not as a Diſſolution. No. 216. (*See* Settlements not gained by Service. No. 215.)

In a Place where the Maſter has neither Habitation nor Eſtate. No. 223.

Leave of Abſence is ſufficient to excuſe quitting the Service *thirteen Days* before the *End* of the Year: And Abſence in the *Middle* of the Year is *purged* by the *retroſpective Conſent* of the Maſter, who receives him back again. No. 229.

Though the Servant told his Miſtreſs, *at the Time of Hiring*, "that he was in the "*Militia*, and *might be* about a *Month* in "the Year to *attend in that Duty*; but "he would pay a Man to ſerve in his "Place, or elſe make her an Allowance "out of his Wages, for the Time he "was abſent." No. 234.

Service—The Servant's Settlement does not depend upon that of his Maſter; It is gained in the Place where he has performed the *laſt forty Days Service*; whether it be a *public Place*, or any other. No. 241.

The Words of the Order in Queſtion were holden to be a *ſufficient Stating* of a Service for a Year. No. 249.

Alternate, in *two Pariſhes*; never continuing forty Days *together*, in either; but more than 40 Days *in the whole*, in *each*. No. 258.

Taxes—by a *Tide-Waiter*, who was rated and paid the *Land-Tax* for his Salary; though he was *repaid* by the Collector, No. 3.—By Tenant paying the Land-Tax, though *repaid* by the Landlord. No. 132. No. 155.——By being rated by Name "*Bowdens*," and paying a Quarter's Church and Poor Ley; though *repaid* by the Landlord. No. 168.

Being *charged* AND *paying* to a Rate are *Both* of them neceſſary. No. 21.—— The Perſon muſt be *rated* as well as *pay* the Tax. No. 30.

—— the *Land*-Tax; though it be not for a *whole* Year. No. 22. It needs not be a *parochial* Tax. *Ibid.*

—— the *Land*-Tax in a Tenement of *leſs* than 30*l.* Value. No. 27.

—— the *Land*-Tax and *Poor's* Rate; though the Purchaſe-Money was only 12*l.* No. 138.

Being *rated* thus—"*T. C.* or *Tenant*"——The *Tenant paid* the Taxes; and gained a Settlement thereby. No. 148.

A Son *charged as Occupier* and *paying*; though his *Mother* (with whom he lived) was the *Real Occupier*. No. 200.

The Land-Tax was *demanded* of the Pauper by the Pariſh-Officers; who *ſhewed him a* Paper-

Paper-Writing, in order to inforce the Payment; and *read over the Sum* he was to pay; and afterwards *diſtrained for it*. This is ſufficient Proof to the Juſtices, ——"of his being *rated*;" without *producing* the original Rate to them. No. 259.

Tenant at Will—of the *Moiety* of a Tenement, where the *Moiety exceeds* 10*l*. *a Year*. No. 128.

SETTLEMENTS NOT *gained by*

Adminiſtrator—having the remainder of a Term in a Cottage; *unleſs* he take out Letters of Adminiſtration *within* that Term. No. 34. *See* Adminiſtration.

Apprenticeſhip—where the *Indentures* are *not ſtampt*. No. 69. No. 80. *See* Indentures.

Where all the Terms were complied with purſuant to an *Agreement*, but *no Indenture executed*. No. 94. No. 95. No. 173. No. 262. *See* Indentures.

Unleſs a *Binding within the Act* appears. No. 104.

To a Maſter who at the *Time* of binding had *not a Certificate*, but obtained One within 22 Days after the Binding——*Otherwiſe*, if the Apprentice had ſerved *forty Days* before the Maſter had brought his Certificate. No. 150.

(Pariſh) Where *One* of the two Juſtices who aſſent to the Binding is not of the *Quorum*. No. 41. *See* Juſtices.

In *another Pariſh*; unleſs the *Maſter conſents* to it. No. 256.

See Title "*Apprentice*" and No. 193. No. 198. No. 203.

Binding—(*Parol*) It muſt be *by Indenture*. No. 102.

Certificate-Man—who *hired a Tenement* of 10*l*. *per Annum*; but the Seſſions adjudged it *fraudulent*; and the Circumſtances vindicate or warrant their Concluſion. No. 62.

Certificate-Man—*executing an annual Office*, if not legally placed in it. No. 76. *See* No. 167. (But that was *not* the Caſe of a Certificate-Man.)

Though legally *placed* in an annual Office; if he does not *execute* it a *whole* Year. No. 81.

(A *Schoolmaſter*) who received 10*l*. a Year: ——He had no Freehold there. No. 83.

Children—of a *Certificate-man*; by a *Hiring and Service* for a Year *in* the Pariſh to which the Father was certificated; nor by *any other* Method than *One of the Two* ſpecified by 9 & 10 *W*. 3. *c*. 11. No. 65. No. 92. No. 112. No. 121. But

They are *not* reſtrained from gaining a Settlement in a *third* Pariſh, in the ſame Manner any one elſe might. No. 65. No. 92. And, *after* they have gained a Settlement by Apprenticeſhip in a third Pariſh, *may gain* one by a Hiring and Service for a Year *in* the Pariſh to which the Father was certificated. No. 136. 137.

Of a *former Huſband*——They do not acquire the Settlement of their Mother's *ſecond Huſband*. No. 2.

Taken into a Family *from Charity*, and continuing there ſix Years *without* any *Contract* or Agreement. No. 157.

Eſtate—of 14*l*. a Year by *Deſcent*; becauſe the Intereſt in it *determined* before 40 Days Reſidence. No. 110.

The Purchaſe whereof was *under* 30*l*. The Purchaſer was *only irremovable during the Time of inhabiting* the purchaſed Premiſſes. Therefore, though the Father was irremovable, the *Son* had *no derivative* Settlement there. No. 166.

Where the Purchaſe Money was only 19*l*; though 15*l*. more was *laid out*, to put it in Repair; and though the Owner was *taxed*

taxed after the Rate of a Tenement of 30*l.* Value. No. 177.

N. B. The Act of 9 G. 1. *c.* 7. takes the *Value* of the Purchaſe from the Money *actually paid* at the *Time* of making the Purchaſe. *Ibid.*

Eſtate—and *Poſſeſſion for* 20 *Years*, of a Cottage upon the Waſte. No. 194.

The like for 35 Years. No. 195.

Executing—the Office of Conſtable; becauſe he was *not preſented* at the Court Leet, as the *Cuſtom* had been. No. 167.

The Office of Conſtable *for another*. No. 196.

In Extraparochial Places—*unleſs* ſuch Place comes under the Notion of a *Vill* or *Town* No. 11.——And to conſtitute a *Village*, there muſt be a *Conſtable or Tythingman*. No. 31.

Habitation—A Woman poſſeſſed of a Leaſehold-Eſtate, deviſes to her Grandſon, "the "Sum of ten Pounds a Year, to be paid "*out of her Eſtate.*" There is no Colour for his going to *live upon this* as his *own*. No. 237.

Hiring—at *Statutes* from the 14*th of November till Martinmas* following (the 11th;) becauſe it was *not* a Hiring and Service for a Year. No. 55.

For a Year, and Service for *eleven Months*——He had for ſome Time before been a *weekly Labourer*. The former *weekly* Service can *not* be coupled with the Hiring for a *Year*; becauſe *not* EJUSDEM GENERIS. No. 98.

For a Year, where the Time upon *Liking previous* to the Hiring is *included*. A Hiring for a Year can have *no Retroſpect*. No. 109.

For a Year, with Liberty to be *abſent during the Harveſt Month*. No. 141.

And *Service* for two Years, in two different Places.——The Maſter of a Pariſh *Apprentice*, in Conſideration of 40*s.* agreed to *diſcharge* him: But the Apprentice was *not of Age* to conſent to the Diſcharge. No. 142.

Hiring—and *Service* for three Years—— The Service was only to be eleven Hours the ſix working Days: The *Reſt of the Time* the Servant was his *own Maſter*. No. 146.

For a Year, and *Service till within three Weeks* of the End of the Year, and then with his own Conſent *diſcharged*; tho' the Servant returned a Fortnight after, and was hired for a Year, and ſerved ſix Months. No. 147.

And *Service for a Year*, by a Man who is *married* at the *Time* of being hired. No. 156.

There muſt be a Hiring *for a Year*; either expreſsly, or in Law. No. 202. and No. 206. and No. 210.

And a *reciprocal Obligation*. No. 202.

Whereas they here came to a new Agreement, on the Servant's threatening to quit the Service. *Ibid.*

To ſerve as *Shearman*, for five Years; to *work Shearman's Hours only*, and to be *at his own Liberty* at *all other* Times; to have *weekly* Wages: This is *not* a good Hiring; becauſe the Exception is *Part of the Contract*. No. 218. (*See* Title "Set-"tlements gained by Hiring. No. 209.")

To ſerve as UNDER-*Carter* to *T. M.* proves *T. M.* to have been hired as Upper-Carter. No. 220.

Where the *Exception* is *Part of the Original Contract*. No. 246.

Where the Hiring is for *leſs than a Year*. No. 255.

Marriage—A Woman *without* Conſent of Parent or Guardian, married a *Minor*, ſince the Act of 26 G. 2. *c.* 33: For by Section 11. the Marriage is *abſolutely null and void*. No. 154.

Office

Office—(executing the) of Conſtable; becauſe he was *not preſented* at the Court Leet; as the *Cuſtom* had been. No. 167.

Parentage—a *Grown Son, not removing* with his Father to another Pariſh, gains no Settlement in ſuch other Pariſh. No. 197.

Pariſh-Apprentice—where *One* of the two Juſtices who aſſent to the Binding is *not of the Quorum*. No. 41.

Parol-Binding—muſt be *by Indenture*. No. 102.

In Places *Extraparochial*:—unleſs ſuch Place comes under the Notion of a *Vill* or *Town*. No. 11. And to conſtitute a *Village* there muſt be a *Conſtable or Tythingman*. No. 31.

Renting—a Tenement of 6*l.* 10*s.* *per Annum*, with a *Covenant* to *make it worth* 10*l.* a Year: But that Covenant was *not performed*. No. 47.

A Tenement of 16*l.* *per Annum jointly* between two Perſons, though it had been let at 20*l.* a Year; ſince the *Half* does *not amount* to 10*l.* a Year. No. 111.

A Meſſuage &c. and *Feeding* for 16 Cows in a Dairy; though he was to pay above 10*l.* a Year——This was *no Tenement*: A *Tenement* muſt lie in *Tenure*, and *relate to Land*. No. 113.

A Tenement of 8*l.* *per Annum*, and being a Joint-tenant for 3*l.* 15*s.* more, and to pay the joint-tenant 4*s.* more for ſome Privileges.—This 4*s.* cannot be conſidered as a Rent. Then 8*l.* added to the *Half* of 3*l.* 15*s.* is *not* equal to 10*l.* No. 159.

A mere Right—in his Wife, to Dower out of her former Huſband's Eſtate. No. 243.

Sequeſtrator—appointed to ſerve the Cure for three Years, *or till* the Biſhop ſhould releaſe the Vicarage. No. 232.

Servant—going away within the Year, and *not returning*. No. 20.

Service—for ſix Years, *without* any *Contract* or Agreement. No. 157.

Service—for four or five Years; becauſe there was no *Hiring or Agreement*: The Servant was to be paid one Penny a Groſs for the Buttons he ſhould make, deducting 5*s.* a Week for his Meat, &c. No. 165.

A *Return* into Service, *after the Contract is diſſolved*, can't be connected with the old Contract. No. 215. But a Diſcharge, for a reaſonable Cauſe, a *Day* before the End of the Year, ſhall not be too rigidly conſtrued to be a Diſſolution of the Contract, but a *Leave* of Abſence. No. 216.

If any Part of the Year is *excepted out of the original Contract*, the Abſence thus *originally ſtipulated for*, prevents gaining a Settlement. No. 229.

Sheerneſs Dock-Yard-Men—in virtue of their *Contribution to the Cheſt*. No. 199.

Taxes—paying them; unleſs *rated* too. No. 29, 30. No. 192. No. 252. No. 254.

Tenant—paying the Poor's Rate; if not *rated alſo*. No. 29.

STAMP-DUTY

Payable by 8 *Ann. c.* 9. §. 45. (See *Apprentice.*) No. 261.

STATUTES *(their Expoſition)*

Weſtm. 2. *c.* 31.—with reſpect to a *Bill of Exceptions* lying to the Juſtices at their Seſſions—It muſt be *ſuch* a Proceeding as in Conſtruction of Law is an IMPLEADING of the Party. Lord *Coke* in his 2 *Inſt* 427. ſays "This Act doth extend as well to the "Demandant or Plaintiff as to the Tenant "or Defendant in all ACTIONS *real, perſonal,* "or *mixt*;" but ſays nothing of *criminal* or *ſummary* Proceedings. No. 24.

5 *Eliz. c.* 4.—An Apprentice bound for *four* Years only, and not for ſeven according to that Statute, gains a Settlement. Section 41. has relation to the other Clauſes ſo as to reach Section 26. Yet the Indenture is not

therefore, *void*, but only *voidable* by the Parties themſelves, *not* by the Pariſh. No. 28. *See* No. 84. *2d Diviſion.*

Sect. 5.—with reſpect to *diſcharging* a *Servant*—requires *ſufficient Cauſe* of Diſcharge. *Marriage* is *not* a ſufficient Cauſe: 'Tis no Miſdemeanour. No. 115.

Sect. 35.—with reſpect to *diſcharging* a *Pariſh-Apprentice*—It can not be done but by *four Juſtices* under their *Hands and Seals.* No. 84.

5 *Eliz. c.* 5—Indentures, *not inrolled* purſuant to this Act, are not abſolutely *void*; but only *voidable.* No. 189.

43 *Eliz. c.* 2. *ſect.* 5.—To make good a *Binding* of an Apprentice under this Act, *One* of the two Juſtices who aſſent to it muſt be of the *Quorum*: And this muſt be alledged in the Order. No. 41. No. 50.

A *Pariſh*-Apprentice bound purſuant to this Act—*After* he comes to the Age of 21, if his Maſter and he agree to it, they may diſſolve the Contract, *without the Conſent* of the *Pariſh-Officers.* No. 180.

13 & 14 *C.* 2. *c.* 12.—*Sect.* 1. *What* is "a "*Tenement*," under this Clauſe. A mere perſonal Contract, an Agreement for the Uſe and Feeding of Cows is *not*: A *Tenement* muſt lie in *Tenure*, and relate to *Land.* No. 113.

Sect. 1. Under this Clauſe too, the REAL *Value* of the Tenement and not the *mere Rent* is the Point to be conſidered. No. 128. The *Criterion* of this Act is the Credit and Ability of being truſted with a Tenement of the yearly Value of 10*l.* No. 151. *See* No. 159.

Sect. 21. *What* is a *Townſhip* or *Village* under this Clauſe. No. 31. *See* No. 11.

A Perſon's *coming into a Pariſh* as *Executor* or *Deviſee*, is not *ſuch* a Coming to ſettle in a Pariſh as this Act intended to prevent; becauſe he comes into it by a *precedent Right* and Title; not as a *Wanderer*, or with a *bad Deſign.* No. 4.——When the Intereſt *devolves* upon a Perſon *by Act of Law*, 'tis *not* within the Purview of this Act. No. 172.

A Tenement worth only 6*l.* 10*s.* a Year, with a Covenant "to *make* it worth 10*l.* "a Year," which Covenant was never performed, is *not* a ſufficient Taking to gain a Settlement under this Act. No. 47.

This Act does not require an *Occupation* of a Tenement of the Value of 10*l.* a Year. It is enough if a Perſon *hires* one of that Value, and reſides above 40 Days in the *Pariſh.* No. 184.

It does not require a Complaint to be *upon Oath*, in an Order of Removal. No. 50.

See the *Difference* between this Act and that of 13 *G.* 2. *c.* 24. *ſect.* 7. *for paſſing Vagrants*, in No. 72. and No. 74.

3 & 4 *W.* & *M. c.* 11.—This Act and 9 & 10 *W.* 3. *c.* 11. ought to receive the *ſame* Conſtruction, and to be *conſtrued liberally* and *in Favour of* Settlements. No. 10.

Sect. 7. The 7th Section of this Act and the 4th of 8 & 9 *W.* 3. *c.* 30. ought alſo to receive a *liberal* Conſtruction. No. 37.

Sect. 6. The 6th Section does not require a Payment of the publick Taxes for a *whole* Year; it only requires a Perſon to be *charged and pay* his *Share towards* them: Nor is it confined to *parochial* Taxes. No. 22. And although ſuch Tax ſhould be *repaid* by the Landlord *&c.* a Settlement is gained. No. 132. But in the Executing an annual Office, it muſt be *for himſelf* and on his *own Account.* No. 167.

Sect. 7. The 7th Section does not prevent an *unmarried* Perſon, not having Child

or Children from being hired and gaining a Settlement by Service. No. 145. By this Clauſe a *Hiring* for a Year is made neceſſary. No. 147: And by 8 & 9 *W.* 3. *c.* 30. *ſect.* 4. a *Service* for a Year was added. *Ibid.* A *hired* Servant muſt be *then unmarried*. But

Sect. 8. The 8th Section does *not* require *that* Circumſtance in an *Apprentice*. No. 164. Yet to make a *Binding valid*, it muſt be by *Indenture*. No. 102. *See* No. 104.

A Servant going upon *Liking* for 8 Weeks, and then being hired for a Year, to *commence* from the *Beginning* of that eight Weeks.—This *retroſpective* Hiring is *no* Hiring for a Year within this Act. No. 109.

5 *W.* & *M. c.* 21.—*Sect.* 11. The 11th Section of this Act makes Indentures of Apprenticeſhip *unſtamped* to be inadmiſſible in Evidence, and unavailable in Law or Equity. No. 69. (*Note.* In this Caſe, the ſeveral Stamp-Acts relating to Indentures of Apprenticeſhip are compared and diſtinguiſhed.)

8 & 9 *W.* 3. *c.* 30. the (Certificate-Act)—A Paper-Writing bearing the *Form* of a Certificate, for the Purpoſe of admitting a Patient into an Hoſpital, is *not* ſuch a Certificate as is meant by this act. No. 99.

A Certificate which does *not purſue* the Directions of this Act can not conclude the Pariſh that gives it. No. 187.

Sect. 1. The firſt Clauſe does not extend to the Caſe of an *Apprentice* to a certificated Man a *third* Pariſh: Neither does 9 & 10 *W.* 3. *c.* 11. The Pariſh *certificated* to, is the *only* Pariſh that can derive any *Benefit* from the Certificate. No. 122.

Sect. 4. If a Servant abſents himſelf *without Leave*, and the Maſter *receives him* again, the Servant gains a Settlement notwithſtanding this Clauſe. No. 14. But it requires a *Service* for a whole Year. No. 20. No. 147. as well as a *Hiring* for a Year is neceſſary under 3 & 4 *W.* & *M. c.* 11. *ſect.* 7.

Sect. 6. By the 6th Section an *Appeal* muſt be to the Quarter-Seſſions of the *County*, not of the *Burrough*. No. 191.

A Servant hired for a Year and ſerving for a Year, and *continuing* in the *ſame* Service (without any new Contract) gains a Settlement in the Pariſh where the laſt forty Days Service was performed. No. 87.

Legitimate Children only, of certificated Perſons, can be ſent back under this Act: Their *Baſtards* can not. No. 66.

9 & 10 *W.* 3. *c.* 11.—*Children* of a Certificate-Man are *reſtrained* from gaining a Settlement *in* the Pariſh certificated to, by any other Act than One of the *Two* in this Statute ſpecified; But they are *not* reſtrained from gaining a Settlement in *another* Pariſh, in the ſame Manner *any one elſe* might. No. 65. *See* No. 143.

This Act only requires the Executing ſome annual Office *in* the Pariſh: It is not neceſſary that the Office ſhould *extend* throughout *all* the Pariſh. But it muſt be for a *whole* Year. No. 81. No. 117.

2 & 3 *Ann. c.* 6.—Indentures *not regiſtered* with the Collectors of the Cuſtoms, purſuant to this Act, are not *abſolutely void*, but *only voidable*. No. 189.

8 *Ann. c.* 9.—*Sect.* 35 & 39. *Thirty Shillings* given with a Boy *to cloathe* him, on being put *Apprentice*, is *not* ſuch a Sum as is within theſe Clauſes. No. 48. Or even 5*l.* where it is paid out of a *publick Charity* No. 185.

Sect. 32 & 39. Where the *Conſideration*-Money is *only* 6*d.* 'tis *not* within theſe Clauſes. No. 120.

12 *Ann. ſtat.* 1. *c.* 18.—*Sect.* 2. A Perſon having ſerved the Office of Conſtable *in* a *City* gains a Settle-

a Settlement in the Parish where he resides: And his *Apprentice* is settled there too, and *not* precluded by this Act. No. 10.

3 & 4 *W. & M. c.* 11. and 9 & 10 *W.* 3. *c.* 11. ought to receive the *same Construction* in this Point "of Executing a public annual Office in a Parish:" And *all* these Laws ought to be construed *liberally* and in *Favour* of Settlements. *Ibid.*

An *Apprentice* to a *Certificate*-Man *assigned* to a Master living in another Parish, gains a Settlement under such Assignment and Service, notwithstanding this Act. No. 54. *See* No. 170.

This Act is confined to the *single* Parish to which the *Certificate is given*; and does not extend to a *third* Parish: Neither does 9 & 10 *W.* 3. *c.* 11. or 8 & 9 *W.* 3. *c.* 30. *sect.* 1. They are only intended for the Benefit of *that* Parish *to which* the Certificate is *given*. No. 122.

By this Act it is a Condition *precedent* to an Apprentice's gaining a Settlement, "that he be bound and serve for 40 Days "a *Master* who did not either *come into* "or *reside in* the Parish by Licence of a "*Certificate*." No. 150.

9 *G.* 1. *c.* 7.—*Sect.* 5. The Purchaser of an Estate *under* the Value of 30 *l.* *bond fide paid*, is removable as soon as he *ceases to inhabit* it. No. 17. and No. 177. But

If the Person comes to it by *Gift*, *Devise*, &c. it is *not a Purchase* within the *Meaning* of this Act. No. 124.

Though a Purchaser *borrows the Money*, if it be *above* 30 *l.* *bond fide paid*, he gains a Settlement. No. 18. *See* No. 27.

Money due on Bond and simple Contract may be *added* to Money due on Mortgage; and if it *exceeds* the Sum of 30 *l.* the *Mortgagee*, upon taking out Administration and 40 Days Residence, gains a Settlement. No. 61.

This Act was only levelled against *fraudulent* Purchasers. The Act of 3 & 4 *W. & M. c.* 11. *sect.* 6. is not affected by it. No. 138.

A *Father* can not *communicate* a Settlement to his Son, where the Father is *barely irremovable so long as he inhabits* his Purchase: Nor does such *temporary* Settlement of the Father *extinguish* his *own* former Settlement. No. 166.

5 *G.* 2. *c.* 19.—relates to amending Defects by Justices at Sessions. No. 58. (In this Case, the Difference between *Form* and *Merits* is ascertained.)

13 *G.* 2. *c.* 18.—*Sect.* 5. requires the *Certiorari* to remove an Order to be brought within *six Months*; and *six Days Notice* to be given to the Justices who made the Order. No. 55.

13 *G.* 2. *c.* 24. *Sect.* 7. For *passing Vagrants* —had a *different View* from that of 13 & 14 *C.* 2. *c.* 12. for *fixing* Settlements. No. 72. and No. 74.

16 *G.* 2. *c.* 18.—*Sect.* 1. *impowers Justices to Act*, in certain Cases, in *Parishes* where they are *rated and chargeable*. No. 68.

17 *G.* 2. *c.* 38.—does *not oblige* the Parish-Officers to *rate* a Person *unfit* to be rated. No. 138.

26 *G.* 2. *c.* 33.—*Sect.* 2. By Section 2. of this Act, the *Marriage* of a Person *under Age* is *absolutely void*: And therefore the Woman and Child could *not* be removed to the *Man's* Settlement. No. 154.

Sect. 14. and *Sect.* 15. The Want of *signing the Entry* pursuant to the 14th and 15th Sections, does *not invalidate* the Marriage: But the *Minister neglecting* it, is liable to an Information. No. 162.

VAGRANT

How to be sent *from* the Place to which he is passed. No. 263. See *Pass.*

WIFE

Not removable from her Husband, though he have no Settlement. No. 253.

FINIS.

Ex GMB

Chasm in paging 329–64; matter complete